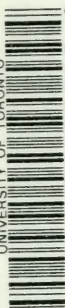
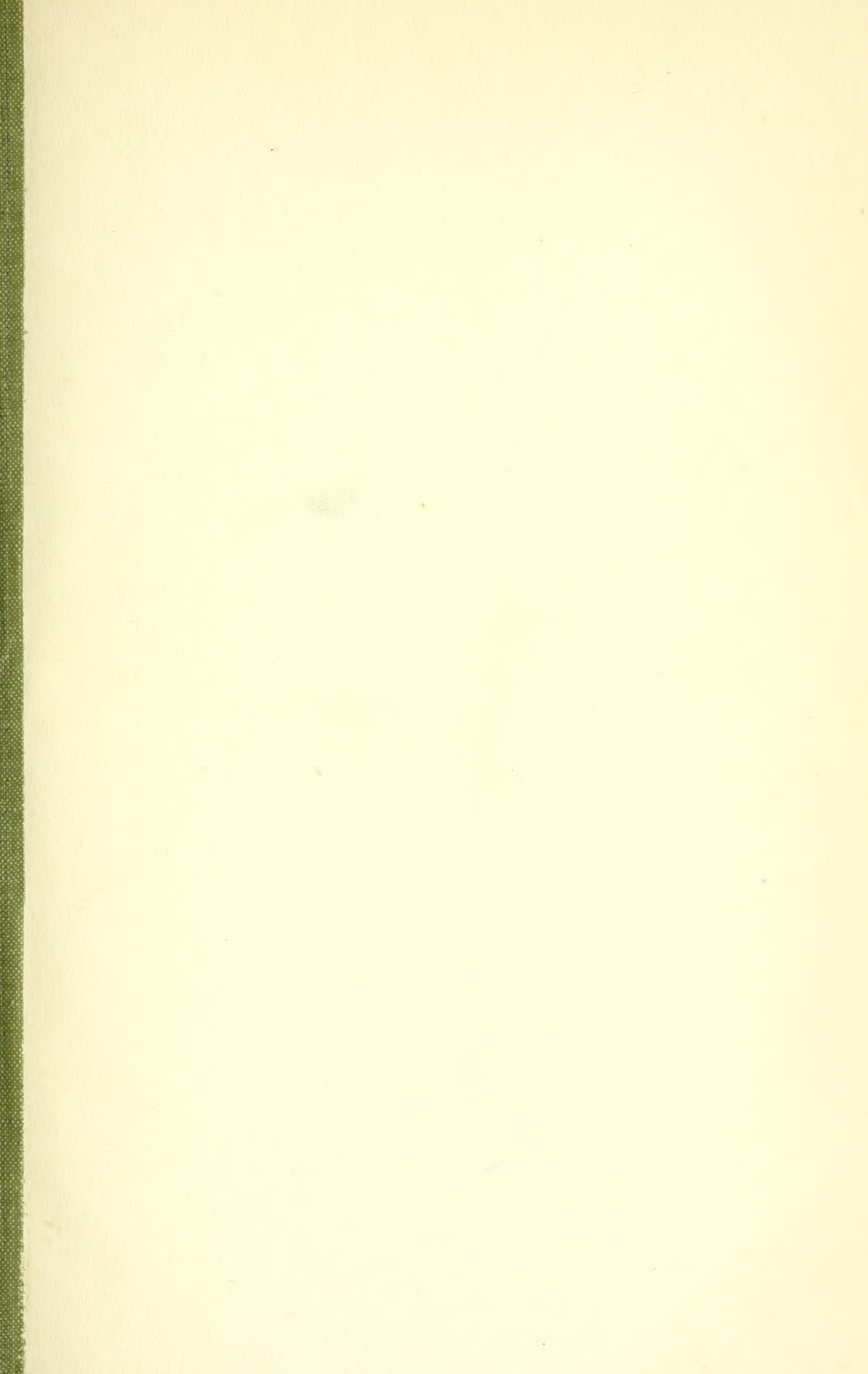


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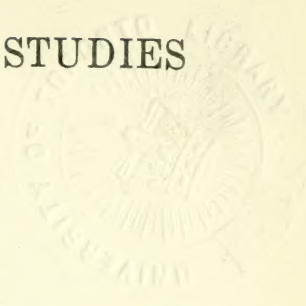


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UNIVERSITY OF ILLINOIS STUDIES

IN THE

SOCIAL SCIENCES



VOL. X

MARCH, 1922

No. 1

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A Study of "Monarchical" Tendencies in the United States from 1776 to 1801

BY

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PREFACE

The present study is an attempt to add something of value and interest to the understanding of the nature, causes, and extent, as well as the evidences and influence of monarchical tendencies in the United States from 1776 to 1801. Many writers have touched upon the subject. Some have disposed of it with a few sweeping generalizations; others have given considerable space to certain of the more striking manifestations of monarchical tendencies. I have prepared a study which presents, so far as I know them, all the more important data on which justifiable generalizations can be based. By its relative completeness and by its arrangement of the facts, for the most part, in chronological order, this study should afford an account somewhat clearer and more comprehensive than those attempted in preceding treatments.

Foremost among numerous persons to whom I am indebted for valuable criticism and suggestions are Professor Theodore C. Pease and Professor Evarts B. Greene, of the University of Illinois. The latter assisted in an advisory capacity from the very outset of the work. Any errors in respect to fact or treatment are, of course, entirely my own.

CHAPTER I

ATTITUDE OF THE AMERICANS TOWARDS KINGSHIP ON THE EVE OF THE REVOLUTION

In 1765 the Stamp Act Congress professed to be "sincerely devoted, with the warmest sentiments of affection and duty to his Majesty's person and government," and "inviolably attached to the present happy establishment of the Protestant succession."¹ In the closing paragraph of the Resolutions of the Congress George III is called "the best of sovereigns,"² and four days later, in a similar document, the members declared, "We glory in being the subjects of the best of kings."³ Assertions of this sort, often repeated in the immediately succeeding years, ill accord with the famous indictment of the King in the Declaration of Independence.⁴ The contrast is more or less evident in almost any historical treatment of the ten years prior to the Revolutionary War. The development of this hostility to King George and its extension to the very institution of kingship demands attention at the outset of our investigation.

Throughout the Stamp Act controversy, despite the high pitch of popular indignation,⁵ the Americans accorded respect to the King and cast the blame upon his ministers.⁶ Just as attention

¹William Macdonald, *Select Charters and other Documents Illustrative of American History, 1606-1775*, 314.

²*Ibid.*, 315.

³H. Niles, *Principles and Acts of the Revolution*, Petition to the House of Commons, 459.

⁴*Journals of the Continental Congress*, V, 511-514.

⁵For transcripts of official reports on the intensity of feeling see letters of Nov. 4, 5, 8, 1765, by General Gage, *American Stamp Act Collection*, Bancroft transcript, Manuscripts Division, Library of Congress. For secondary account see that by G. E. Howard, *Preliminaries of the Revolution (The American Nation: A History, VIII)*, ch. VIII.

⁶Jeremy Belknap comments on absence of disrespect to the King as illustrated by letters and papers passing between "the Sons of Liberty in Portsmouth and their brethren in Boston, Providence, Connecticut, New York, &c., during the time of the Stamp Act." Belknap Papers, I, 120-121 (*Massachusetts Historical Society*

centered upon the ministry as the hated oppressor, so attention centered upon the King as the source of deliverance and his part in the repeal was emphasized and exalted. In taking this attitude the Americans were probably influenced by the English newspaper account, which arrived on the same ship with the official dispatch. This described the King's participation in a truly impressive manner. For example, it declared that as he had gone through the streets on his way to the House of Lords to give his assent to the repeal, "there was such a vast Concourse of People, huzzaing, clapping Hands, &c. that it was several Hours before his Majesty reached the House."⁷ A diary entry expressed the general sentiment when it recorded the arrival of "the glorious news of the total repeal of the Stamp Act, which was signed by his Majesty King George the 3d of ever glorious memory, which God long preserve and his illustrious house."⁸

Again, the King was made the central figure in the jubilant celebrations of the event in America. Emblematical paintings were prepared in some places, box-like arrangements set one above another. Upon these the King was depicted in all his glory—and in model company! The upper compartment of the Boston pyramid was decorated by "heads of King and Queen & fourteen of ye Patriots, being four on a side."⁹ That at Newport was still more splendid. "In the Centre of the third, [highest compartment] his Majesty in his Royal Robes sat enthroned, & with a most gracious Aspect, pointed to a Scroll . . . inscribed in Capitals, 'Stamp Act Repealed 1766, G. R.' " Pitt, with Magna

Collections, 5th ser., II). A vivid account of the demonstrations against the ministry is contained in "An anonymous diary of Events in America" [by Ebenezer Hazard], Feb. 7, 1765, to June 30, 1770," *American Stamp Act Collection*, Manuscripts Division, Library of Congress. The famous incident of Patrick Henry's speech and the interrupting cries of "Treason" is told by himself in his *Life and Correspondence and Speeches* I, 81. See also Howard, *Preliminaries of the Revolution*, 144. Compare *American Historical Review*, XXVI, 727-729, 745.

⁷Reprinted in America in handbill form. For facsimile see J. Winsor, *Narrative and Critical History of America*, VI, 33.

⁸Diary of John Rowe, *Massachusetts Historical Society Proceedings*, 2d ser., X, 62.

⁹P. 41, Stevens, Transcript of Hazard's narrative for 1765-1770, *Stamp Act Congress*, Manuscripts Division, Library of Congress.

Charta, was at the right of the King, while Camden, with the Bill of Rights, completed this interesting group.¹⁰

The above passages have been quoted not because they are quaint and amusing but because they indicate one of the most important features of the theory of kingship held by the American colonists.¹¹ The wearer of the crown was expected to be the champion of the rights of his people and accordingly was the center of popular interest in government.¹² If he should fail so much the worse for him, but the people would be slow to admit failure. Thus every year till after the bloodshed at Lexington and Concord there were expressions by Americans of loyalty to the King,¹³

¹⁰For other celebrations see Stevens, *op. cit.*, June, 1766, and Rowe's *Diary*, May 19 and June 4, 1766, *op. cit.*, 62.

¹¹A feature which has survived in the popular attitude towards the President, as depicted in an account like that by Gaillard Hunt, "The President of the United States;" *Wisconsin Historical Publications*, LXIII, 76-98.

¹²Of course, the writer means this to apply to national or imperial government rather than local.

¹³The references in the following cases are to issues of the *Newport Mercury* unless otherwise indicated. Most of the data is of a nature to have been also printed elsewhere and could be located by a person who did not have access to the *Mercury* but did have the other sources at hand. Some of the early issues of the *Mercury* carry two dates in their subtitle. In making citations below only the second is used. For example, the first reference is recorded as "*N. M.*, Jan. 12, 1767," rather than "*Newport Mercury*, from Monday, January 5, — to Monday, January 12, 1767."

Reply of the House of Burgesses to the Lieutenant Governor, Nov. 6, 1766, (*N. M.*, Jan. 12, 1767, p. 1).

Reply of the Massachusetts House of Representatives to the Governor, Jan. 31, 1767, (Feb. 9, 1767, p. 2).

Celebrations of first anniversary of Stamp Act repeal, (Rowe, *Diary*, in *Massachusetts Historical Society Proceedings*, 2d ser., X, 63; *N. M.*, Mar. 23, 1767, p. 1).

St. Patrick's Day feast in Boston, (Mar. 30, 1767, p. 1).

Article by "Liberus," (*ibid.*, p. 1).

Massachusetts Circular Letter, Feb. 11, 1768, (S. Adams, *Writings*, I, 188).

Petition to the Governor by the inhabitants of Boston, June 14, 1768, (*N. M.*, June 27, 1768, p. 2).

Instructions to representatives of the town of Boston, June 17, 1768, (June 27, 1768, p. 3).

Non-importation Agreement by New York merchants, Sept. 5, 1768, (Sept. 19, 1768, p. 3).

Extra-legal Convention in Massachusetts, Sept. 26, 1768, (Oct. 3, 1768, p. 2).

Letter from London describing Dr. Franklin's activities, (Dec. 5, 1768, p. 2).

or rather to their theory of kingship, even though the last and perhaps most famous of these, the petition of Congress to the King July 8, 1775, was in a sense an ultimatum to King George.¹⁴

Loyalty waned but slowly despite the fact that the months and

Report in South Carolina Assembly, Nov. 18 (?), 1768, (Jan. 9, 1769, p. 1).

Resolutions in the Georgia Assembly, Dec. 24, 1768, (Jan. 30, 1769, p. 4).

Petitions of the Pennsylvania Assembly, Sept. 22, 1768, (Feb. 27, 1769, p. 1).

Instructions of the Town of Boston, May 8, 1769, (May 22, 1769, p. 2).

Resolves of House of Burgesses, May 16, 1679, (June 12, 1769, p. 1).

Celebrations of King's birthday, June 4, 1770, (Rowe, *Diary, op. cit.*, 75).

Address of Council of Massachusetts, Mar. 20, 1770, (*N. M.*, Apr. 2, 1770, p. 1).

Address to the King by "Sidney," from the *Parliamentary Spy*, (Apr. 23, 1770, pp. 1-2). Note how conspicuous a place is given to this reprint.

Complaint of House of Representatives of Massachusetts against Governor Bernard, (May 14, 1770, p. 2).

Message from Massachusetts House of Representatives to Lieutenant-Governor, Oct. 13, 1770, (Oct. 29, 1770, p. 2).

Celebration of Queen's birthday, Jan. 18, 1771, (Rowe, *Diary, op. cit.*, 77.)

Virginia Petition to the King, (*N. M.*, Feb. 25, 1771, p. 1).

Reprint from *Poor Richard's Almanac* for the year 1758, (Mar. 6, 1771, p. 2).

Address by Massachusetts House of Representatives to the Governor, Apr. 24, 1771, (S. Adams, *Writings*, II, 168-169).

Article by "Candidus," in *Boston Gazette*, Sept. 16, 1771. (S. Adams, *Writings*, II, 220).

Celebration of King's birthday, June 4, 1772, (Rowe, *Diary, op. cit.*, 78).

Items relating to royal household, (*N. M.*, Apr. 20, 1772, p. 1; Apr. 27, p. 2; *Supplement*, Apr. 27, p. 1).

Celebrations of King's birthday and coronation anniversary, 1773, (Rowe, *Diary, op. cit.*, 79).

Debates of the First Continental Congress, as recorded, contain no evidence of hostility to king or monarchy. (*Journals*, I; J. Adams' notes and account, *Works*, II, 365-401). For expressions favorable to monarchy see *Journals*, I, 82, 86.

Petition to the King by First Continental Congress, Oct., 1774, (*ibid.*, I, 53, 115-121).

Celebration at first appearance of the Newport Light-Infantry, (*N. M.* Apr. 17, 1775, p. 3).

Address of North Carolina Assembly to Governor, Apr. 7 (?), 1775, (May 1, 1775, p. 1).

Letter from New York Committee of Association to Mayor of London, May 15, 1775, (June 5, 1775, p. 1).

Letter from New York Provincial Congress to the people of Quebec, June 2, 1775, (June 19, 1775, p. 2).

Correspondence between New York Provincial Congress and General Washington, June 26, 1775, (July 10, 1775, p. 3).

Second Petition of Congress to the King, July 8, 1775, (*Journals*, II, 158-161).

¹⁴J. Adams, *Works*, II, 410-411.

years had passed without the expected interposition by the King in behalf of the colonists. By 1771 a writer so widely read as "Candidus" was declaring that the only effect of loyal petitions had been to bring new burdens upon the Americans.¹⁵ But reproach was not at first directed against the King but rather against the ministry,¹⁶ the Parliament, and even the English people. To be sure, the precedent of the tyranny of Charles I was cited in opposition to the quartering of royal troops in America.¹⁷ Yet Samuel Adams cited the "unspotted loyalty" of the colonies as an argument against the necessity of the act. He placed express reliance upon the "wisdom and goodness of his present Majesty" and feared only a possible future tyrant.¹⁸

Down to 1769 and 1770 American writers often lauded the British King and constitution in the same breath in which they denounced the ministry.¹⁹ They directed much of the brunt of their attack against the royal representatives in the colonies rather than against royalty.²⁰ They cast the blame upon Parlia-

¹⁵S. Adams, *Writings*, II, 282.

¹⁶For an expression of this reproach by John Adams see his *Works*, X, 246.

¹⁷By "Antoninus" in the *Boston Evening Post*, quoted in the *Newport Mercury*, Mar. 2, 1767, p. 1.

¹⁸S. Adams in the *Boston Gazette*, Dec. 26, 1768, *Writings*, I, 277, 275.

¹⁹"Right, Wrong, and Reasonable, with regard to America," *Newport Mercury*, Aug. 3, 1767, pp. 2-3.

Reprint of "Sidney's" address to the King, Dec. 19, 1769, *ibid.*, Apr. 23, 1770, pp. 1-2.

An inflammatory address against Lord North is found in the *Supplement to the Newport Mercury*, Aug. 8, 1774, p. 1.

Letter from Samuel Stillmen to Patience Wright, Boston, Nov. 13, 1774, *Massachusetts Historical Society Proceedings*, 3d ser., X, 475.

Comment by Thomas Paine, *Political Writings*, I, 169-170, quoted by Tyler, *Literary History of the American Revolution*, I, 457.

Lines copied from "a London Paper," *Newport Mercury*, July 3, 1775, p. 4.

See also letter from New York provincial congress to the people of Quebec, June 2, 1775, *ibid.*, June 19, 1775, p. 2.

²⁰Letter from the *Boston Gazette*, Sept. 28, 1772, *ibid.*, Oct. 5, 1772, p. 2.

Report that Edmund Burke had blamed colonial governors for the troubles, *ibid.*, May 16, 1774, p. 1.

Account of the burning in effigy of Hutchinson at Philadelphia, May 3, 1774, *ibid.*, May 16, 1774, p. 2.

See also John Adams, *Works*, X, 246, 454, 479.

ment²¹ and even upon the English people²² in a way which more or less exempted the King.

Nevertheless, during the two years just mentioned, American opposition to Government measures gained new force and confidence.²³ One manifestation of this change was to be found in certain attacks upon the King himself. He was most disrespectfully ridiculed as the "noodle to an old woman."²⁴ The wish was expressed that "three quarters of the nation had not reason to think" that certain lines upon the obstinate Agamemnon were "very applicable at this present time:"

"That you are honest, we are sure,
Yet, if you give to rascals power,
The wrongs you suffer them to do,
Will all be justly laid on you."²⁵

The loyal addresses to the King were now parodied, as appears from an address "To his Sublime Majesty Oknookortunkogog" who is praised for his loving consideration for his people manifested in his "late order for the destruction of the poisonous weed tea."²⁶

²¹Address to the people of England in *Boston Gazette*, Sept. 21, 1767, *Newport Mercury*, Sept. 28, 1767, p. 1.

Address of New York Assembly to Governor, Nov. 23, 1767, *ibid.*, Dec. 7, 1767, p. 2.

Article from the *Public Ledger*, Apr. 29, 1774, *Newport Mercury*, Aug. 15, 1774, p. 1.

Virginia's instructions to deputies to Congress, Aug. 1-6, 1774, *ibid.*, Sept. 5, 1774, p. 2.

Hall, *History of Eastern Vermont*, 199. (Resolutions of "eighteen delegates from twelve towns," Oct. 20, 1774.)

²²Letters to *Boston Gazette*, Aug. 31 and Sept. 14, *Newport Mercury*, Sept. 7 and 21, 1767, pp. 2, 1, respectively.

Roger Martyn to the *Boston Gazette*, *Newport Mercury*, Sept. 21, 1767, pp. 1-2.

Note, on the other hand, the tendency to make common cause with the English people as shown by the large place given to the John Wilkes controversy (in the *Newport Mercury*, during 1769 and the first weeks of 1770), and such an address as that in the *Boston Gazette*, Sept. 21, 1767, *Newport Mercury*, Sept. 28, 1767, p. 1.

²³For a convenient summary see J. S. Bassett, *Short History of the United States*, 171-174.

²⁴This refers, of course, to his deference to the dowager Queen. See *Newport Mercury*, Oct. 30, 1769, p. 1.

²⁵*Ibid.*

²⁶From the *Massachusetts Spy*. His Majesty's answer is also recorded in the usual ceremonious style. *Newport Mercury*, Apr. 11, 1774, p. 2. A similar satire

One of the "Letters of Junius," appearing in America early in 1770, contained a very explicit account of monarchical ideas in the colonies.²⁷ Whatever his identity, "Junius" was undoubtedly one of the most effective political writers of all time²⁸ and was widely read in America.²⁹ The passage in question will speak for itself.

"They [the colonies] were ready enough to distinguish between you [the King] and your Ministers. They complained of an Act of the Legislature, but traced the Origin of it no higher than to the Servants of the C - n: They pleased themselves with the Hope that their S-r-n, if not favourable to their Cause, at least was impartial. The decisive, personal Part you took against them, has effectually banished that first Distinction from their Minds. They consider you as united with your Servants against A-r-a, and know how to distinguish the S-r-n and a venal P-t on one Side, from the real Sentiments of the English People on the other. Looking forward to Independence, they might possibly receive you for their K-g; but, if ever you retire to A-r-a, be assured they will give you such a Covenant to digest, as the Presbytery of Scotland would have been ashamed to offer to Charles the Second. They left their native Land in Search of Freedom, and found it in a Desart. Divided as they are into a Thousand Forms of Policy and Religion, there is one Point in which they all agree: They equally detest the Pageantry of a K-g, and the supercilious Hypocrisy of a Bishop."³⁰

In respect to his influence on public opinion "Junius" was a fore-

is found in what purported to be a Salem item regarding the coronation anniversary of George III, *ibid.*, Oct. 12, 1772, p. 3.

²⁷The letter of Dec. 16, 1769, directed to the King. Printed in the *Newport Mercury*, Feb. 19, 1770, pp. 1-3.

²⁸On the identity of "Junius" and his superiority over other writers of political invective see *Encyclopaedia Britannica*, XV, 558.

If, perchance, "Junius" was Thomas Pownall, as is claimed by the biographer of the latter, the account is even more interesting to the present study than already indicated, for Pownall had spent years in America and was a serious student of its affairs. See *Life of Thomas Pownall* by C. A. W. Pownall, chapter XII. See also the *Literature of American History* (Larned ed.), 873, for an estimate of Pownall's book on colonial government.

²⁹"The paper signed JUNIUS, which has been published in Boston, Rhode-Island, Philadelphia and this city, has also been re-printed in the South-Carolina Gazette of the 19th of February last, from the St. James's Chronicle of December the 21st". *Newport Mercury*, Mar. 19, 1770, p. 3.

³⁰*Ibid.*, Feb. 19, 1770, p. 2.

runner of Thomas Paine. Unlike the later writer, however, "Junius" did not attack monarchical institutions as such. He painted in glowing colors the happy days at the opening of the reign of George III, and asked no more of him than that he should "distinguish between the conduct, which becomes the permanent dignity of a King, and that which serves only to promote the temporary interest and miserable ambition of a Minister."³¹ He had only praise for the readiness of men "to sacrifice their lives to save a good Prince, or to oppose a bad one."³² He believed the character of the English people a sufficient safeguard against the tyrannical attempts of any English king.

Another indication that the censure of a king did not necessarily involve the censure of kingship is found in the expressed hope that King George might yet mend his ways. "A Chronological Table of Epithets" for British rulers, ranging from "The Glorious" to "The Never Right," suspended judgment in the case of George by leaving a blank space opposite his name.³³ The fable of "The Lion and the Fox" contained these lines:

"May gracious Kings have all the Rev'rence due,
And ev'ry Stuart find his Cromwell too."³⁴

As late as July 3, 1775, the following verse appeared:

"In time be wise, drive Traitors from thy breast,
And let the just, the honest round thee move;
So shall the sinking State once more be blest
And thou be happy in thy people's love."³⁵

But, in addition to the attacks upon the King, already discussed, there were attacks upon the monarchical institution. An early and apparently isolated one appeared in the summer of 1768

³¹*Newport Mercury*, Feb. 19, 1770, p. 1.

³²This expression is from a letter appearing later in 1770, in *ibid.*, June 11, 1770, p. 1. For further attacks against the King rather than against the kingship see the taunts of the "Whisperer" (*ibid.*, July 23, 1770, p. 1), the "Description of a Tory" (*ibid.*, Sept. 2, 1771, p. 4), a Junius letter (*ibid.*, Sept. 30, 1771, p. 1), comments by "Candidus" (Samuel Adams, *Writings*, II, 252, 262, 273, 292-293), extract from letter from London (*Newport Mercury*, Apr. 27, 1772, *Supplement*, p. 1), verses quoted from the *North Briton* (*ibid.*, July 13, 1772, p. 2).

³³*Newport Mercury*, Oct. 30, 1769, p. 2.

³⁴*Ibid.*, Nov. 2, 1772, p. 1.

³⁵Copied from "a London Paper," by the *Newport Mercury* of July 3, 1775, p. 4. The title is significant, "An Elegy to the Memory of the best of Kings."

in an appeal by "A Son of Liberty"³⁶ to the "Pennsylvania Farmer" to leave the "temporizers" in Philadelphia and unite with Mr. Otis. The latter is praised for his "*firm and manly spirit*" which "*fears neither commissioners, generals, armies, nor navies*, but, inspired with the emanations of arch [word nearly obliterated]³⁷ *antimonarchical principles*, . . . rouses the inhabitants and heroically alienates their affection from *Kingly* and British *subordination*."³⁸

A more characteristic attack on kingship was expressed in an article from the "North-Briton" reprinted in America in 1769. This subjected the King's speech of recent date to a most scathing criticism and cited the "fatal effects" upon popular opinion of a speech by King Charles in 1628. At the same time it professed to be criticising the ministry, not the King, by quoting the "maxim in the English constitution *that the king can do no wrong*." The general effect was to expose the absurdity of the maxim cited.³⁹ An account, imbued with hostility to the institution of kingship, traced the development of British monarchy from the time of its introduction by "tyrannical Anglo-Saxon invaders." It called attention to repeated encroachments of the King and nobles upon the liberties of the people, and told of the happy success of the Italian cities in overthrowing their "haughty lords" and putting the power into the hands of the people.⁴⁰ Some writers, however, were not content with citing the tyranny of the Stuarts and its results for King Charles, but vigorously attacked or ridiculed members of the succeeding line of rulers.⁴¹ On the other

³⁶"To J-H-N D-ck-n-s-n Esq." See below, page 19.

³⁷Both appearance and context suggest "arch."

³⁸Letter to the *Pennsylvania Chronicle* headed "Boston, June-1768," *Newport Mercury*, Aug. 15, 1768, p. 2. Contrast with letter of July 18, 1768, signed by James Otis and reprinted from the *Political Register*, *Newport Mercury*, Apr. 17, 1769, p. 1. For an interpretation see Tyler, *Literary History of the American Revolution*, I, 43.

³⁹*Newport Mercury*, Aug. 21, 1769, p. 4. Apparently the colonists, except some of ultra aristocratic and "High Church" proclivities, did not regard a king as a sacred personage. For an article along these lines see C. H. Van Tyne, "Influence of the Clergy, and of Religious and Sectarian Forces, on the American Revolution," *American Historical Review*, XIX, 44-64. The footnote references as well as the text are very helpful to an understanding of the situation.

⁴⁰Reprinted from the *Royal Magazine* by the *Newport Mercury*, Mar. 5, 1770, p. 1.

⁴¹Article from the *St. James's Chronicle* reprinted in the *Newport Mercury*, Sept.

hand, one part of the British theory of monarchy could be, and actually was, acclaimed by opponents of its other features, namely, that the relation between King and subjects was purely contractual and dissolved by the tyranny of the former.⁴² As will be noted a little later this idea was the basis of the Declaration of Independence.⁴³

It is natural that the American attitude towards kings other than their own should have influenced their general conception of monarchical government. Thus examples of tyrannical rule, from antiquity to the time of writing, were cited early in 1767. Absolutism in Spain was deplored and a scathing reference made to "Prussia . . . as absolute as any monarch of the East." This attack was not, however, directed against monarchical institutions in general but against the dangerous employment of the soldiery.⁴⁴ A "Political Picture of Europe, for June, 1770" was published in an American paper. It is more antimonarchical in character and of considerable interest, especially since its brevity and humorous cast must have attracted the attention of any reader of the issue in which it appeared. A few quotations will indicate the character of this list of contemporary sovereigns:

"The French King leading Monarchs by the nose; the political Puppet-master of Europe."

"The King of Prussia, a fox in a bramble-bush; peeping first out at one corner, and then at another; but seeing an old woman watching him, whips in his head and sits still."

"The King of Poland a Monarch without a crown, wandering through a court, without Nobles."

"The Grand Seignior stretched in a melancholy posture on the borders of the Black Sea, half covered with ooze and seaweeds."

The dozen other rulers described fared little better in this account. The British King, at the end of the list, was pictured as "much puzzled; a fading Rose and a broken Trident lying at his feet."⁴⁵

7, 1772, p. 2., and article from the *Gentleman's Magazine*, *ibid.*, Feb. 8, 1773, p. 3.

⁴²See especially "Extract of a Letter to the King, inserted in the London Evening Post, of Aug. 22, 1772," reprinted in the *Newport Mercury*, Nov. 9, 1772, pp. 2-3. The idea will be found in many of the attacks on the king already cited.

⁴³See below, p. 21, footnote 65.

⁴⁴"Antoninus", quoted in the *Newport Mercury*, Mar. 2, 1767, p. 1. He was opposing the quartering of soldiers upon the population. See above, p. 13.

⁴⁵*Newport Mercury*, Oct. 1, 1770, p. 2.

Far abler than the antimonarchical writings just considered were three defences of kingship, contained respectively in the publications of the "Pennsylvania Farmer," the "Westchester Farmer," and "The Farmer Refuted." Their wide circulation and popularity are well known, and their influence unquestioned. The writers supported kingship, whatever their other views might be. The first⁴⁶ expressly approved the overthrow of the Stuarts as improving the condition of the English people. But he considered it no precedent for a revolt by the colonists, for, he said, "if once we are separated from our mother country, what new form of government shall we adopt. . . . Torn from the body, to which we are united by religion, liberty, laws, affections, relations, language and commerce, we must bleed at every vein."⁴⁷ He felt sure of the general existence of loyalty to the King⁴⁸ yet he betrayed a dread that if the oppressive policy of government were not reversed popular opinion would be aroused against even the legal powers of the crown, as in the days of Charles I, and monarchy be again overthrown.⁴⁹

The "Westchester Farmer"⁵⁰ appeared upon the scene a few weeks after the closing of the Continental Congress of 1774.⁵¹ Ablest of Loyalist writers, and equalled "for immediate effect upon the mass of readers" by no one, perhaps, but Thomas Paine,⁵² his utterances on monarchy compel our attention. His best known remark on the point, so far as present day readers are concerned, is probably his exclamation, ". . . if I must be enslaved, let it be by a KING at least, and not by a parcel of upstart, lawless committeemen."⁵³ In addition he denounced as heresy the theory advanced by the Continental Congress that

⁴⁶Writing in 1768. See *Writings of John Dickinson* (P. L. Ford, ed.), *Memoirs of the Historical Society of Pennsylvania*, XIV, 277-406.

It will be remembered that Dickinson also composed the "Declaration of Rights," of the Stamp Act Congress, the popular "Liberty Song," the "Olive Branch Petition," and other important papers.

⁴⁷*Ibid.*, 326.

⁴⁸*Ibid.*, 350

⁴⁹See also *ibid.*, pp. 387-388.

⁵⁰The Reverend Samuel Seabury, as is well known.

⁵¹Namely, Nov. 16, 1774, Tyler, *Literary History of the American Revolution*, I, 342.

⁵²*Ibid.*, 348-349.

⁵³*Ibid.*, 340.

American allegiance was due only to the King and not to Parliament, a doctrine he believed meant to pave the way to sedition.⁵⁴ On the contrary, the King held his position by act of Parliament, therefore to disown the authority of Parliament was virtually to renounce the King,⁵⁵ which would lead to the tyranny of Congress, the only tyranny Americans just then needed to fear.⁵⁶

With a hundred and thirty years of successful republican existence behind us, it is difficult to conceive that men could ever have expected an independent "United States" to adopt a different government. But listen to the "Westchester Farmer," in 1774. In case of successful rebellion against England, "Probably it would cost the blood of a great part of the inhabitants of America to determine what kind of government we should have, whether a monarchy or a republic. Another effusion of blood would be necessary to fix a monarch, or to establish a commonwealth."⁵⁷

Still more important is the fact that the able refutations⁵⁸ of the "Westchester Farmer," penned by the youthful Alexander Hamilton, upheld monarchical government and the ruling house. This is best illustrated by part of a paragraph near the close of "The Farmer Refuted," namely: "I earnestly lament the unnatural quarrel between the parent state and the colonies, and most ardently wish for a speedy reconciliation—a perpetual and *mutually* beneficial union. . . . I am a warm advocate for limited monarchy, and an unfeigned well-wisher to the present Royal Family."⁵⁹ By limited monarchy Hamilton meant exactly what the words say, and not a balance of monarchy, aristocracy, and democracy as the definition was so often made. He wrote, "Perhaps, indeed, it may with propriety be said that the king is the only sovereign of the empire. The part which the people have in the legislature may more justly be considered as a limitation of

⁵⁴A "gilding with which they have enclosed the pill of sedition, to entice the unwary colonists to swallow it the more readily down." Tyler, *op. cit.*, 343.

⁵⁵*Ibid.*, 343.

⁵⁶The "Congress Canvassed," as quoted in Tyler, *op. cit.*, 343.

⁵⁷*Ibid.*, 26-27, as quoted in Tyler, *op. cit.*, 344

⁵⁸"A Full Vindication of the Measures of Congress . . . in answer to a letter . . . of a Westchester Farmer," Hamilton, *Works* (Lodge ed.), I, 1-50, and "The Farmer Refuted," *ibid.*, 51-169. The former appeared late in 1774, the latter early in 1775. Tyler, *op. cit.*, I, 384-385. For other passages than that quoted bearing on the subject see Hamilton, *Works*, I, 8-9, 64, 76, 78.

⁵⁹*Ibid.*, 168.

the sovereign authority, to prevent its being exercised in an oppressive and despotic way."⁶⁰ All he was asking for the colonists was a due share in this system of limitation.

Thomas Paine's "Common Sense,"⁶¹ the greatest literary factor working for independence in the first half of 1776, was throughout a scathing attack upon monarchical government. Its second part,⁶² "Of Monarchy and Hereditary Succession," concentrated all of Paine's powers of sarcasm and ridicule upon this one subject.⁶³ The origin of kingship was in heathenism, its adoption by the Hebrews was by no divine guidance—quite the contrary—the hereditary principle associated with kingship had generally inflicted stupid rulers upon mankind. As to the peculiar excellence claimed for the British type of monarchy, it was contrary to reason, for, "The nearer any government approaches to a Republic, the less business there is for a King," and the greater waste in supporting such a figurehead! Paine, unintentionally no doubt, left a loophole for the erection of an elective monarchy, which might furnish later encouragement to men interested in the possibility of such a form in America. There may have been other patriot leaders than John Adams in 1776 who, secretly at least, scorned the writings of Paine.⁶⁴ But its unequalled popularity proved that the general public was ready at that time to oppose not only King George but also the institution which he represented.

The Declaration of Independence concentrated its attention upon King George and made no statement for or against monarchical institutions,⁶⁵ but the wholesale destruction of royal emblems⁶⁶

⁶⁰Hamilton, *Works*, I, 76.

⁶¹Published Jan. 10, 1776. *Writings of Thomas Paine* (Conway ed.), I, 67, footnote 1.

⁶²Compare Richard Frothingham, *Rise of the Republic of the United States*, 472.

⁶³"Common Sense" is printed in Paine's *Writings*, I, 69-120.

⁶⁴That John Adams felt thus about Paine may be gathered from his comment, *Works*, II, 153. Perhaps, however, Paine's later career and a possible jealousy on the part of Adams as to originating the move for independence influenced the statement. See *ibid.*, II, 412.

⁶⁵Perhaps this was sufficiently explained by the fact that the separation was legally based on the idea that George III had violated his contract with his American subjects, thereby absolving them from further allegiance. Compare *Writings and Speeches of Daniel Webster* (National ed.), I, 303-304; C. M. Walsh, *Political Science of John Adams*, 6. Compare and contrast C. H. Van Tyne, *The American Revolution* (*The American Nation: A History*, IX), 84-86.

⁶⁶See Ezra Stiles, *Diary*, entry for Aug. 26, 1776, in transcript, Manuscripts

which followed bore witness to at least a momentary detestation of monarchy itself. The democratic constitutions adopted by the several states, as well as the absence of a strong central government, evidenced the persistence of this attitude. Yet traces remain of a preference for monarchy among the revolutionists. Some of these traces are indistinct and difficult to explain. For example, Joseph Warren in an oration at Boston had said, "But if these pacifick measures are ineffectual . . . you will . . . press forward until tyranny is trodden under foot; and you have fixed your adored Goddess, Liberty, fast by a *Brunswick's* side, on the *American* throne."⁶⁷ The figurative language would present no difficulties but for the phrase, "fast by a *Brunswick's* side," which suggests the orator was content to picture a continuance of some sort of monarchy in his country,⁶⁸ even one connected with the then ruling house.

In a somewhat similar vein was a letter written by John Adams in October, 1775. He touched upon the subject in so jocose a fashion as to leave one guessing his real attitude. Whatever he meant when he said that a plan for a "Continental King, . . . a Continental House of Lords, and a Continental House of Commons" was "whispered in the Coffee Houses"⁶⁹ he meant something different from the congressional government in force. Another letter by Adams contains the remark that "the colonies will have republics for their government, let us lawyers and your divine say what we will."⁷⁰ The "divine" referred to was Dr. Zubly

Division, Library of Congress. (Omitted from published diary.) A good brief account of the destruction of the Bowling Green statue of George III is in the *Massachusetts Historical Society Proceedings*, 2d ser., IV, 293-294. An exhaustive treatise on the use and destruction of royal emblems will be found in the same volume, 239-264.

⁶⁷Oration, Mar. 6, 1775, to commemorate the Boston massacre. *American Archives*, 4th ser., II, 43.

⁶⁸Contrast with statement in House of Lords, Nov. 10, 1775, that a gentleman who was a large landowner in New England asserted "that the people of that Province were full of a levelling, republican spirit, which would never be rooted out till they . . . were compelled to bow under . . . constitutional Government . . . that . . . they were no less hostile against monarchical Government than against the rights of the British Parliament." *Ibid.*, 4th ser., VI, 134.

⁶⁹To James Warren, Oct. 28, 1775, *Massachusetts Historical Society Collections*, LXXII, 167. Compare a letter to Mrs. Warren, Jan. 8, 1776, *ibid.*, 201-202, and her comment on it, Feb. 7, 1776, *ibid.*, 205-206.

⁷⁰To Archibald Bullock, July 1, 1776, Adams, *Works*, IX, 414-415. The lines

of Georgia, a native of the Swiss Republic.⁷¹ Although associated with the Loyalists after 1777 he was earlier on good terms with the revolutionists.⁷² He had once said in the Second Continental Congress, "A republican government is little better than government of devils. I have been acquainted with it from six years old."⁷³ There is every reason to believe that he had supported his monarchical ideas in many a confidential talk with his colleagues in Congress.⁷⁴ In the letter quoted, Adams seemed to associate himself with Zubly in the matter. It is interesting to note that in his "Thoughts on Government" Adams left a loophole for a life tenure in the great offices of state. On the other hand, he characterized an important expression of monarchical views as "too absurd to be considered twice." On the whole the principles which Adams openly supported at the time were by no means monarchical.⁷⁵

Still another defense of the monarchical principle on the eve of the Revolution was one under date of February 28, 1776, in which "Rationalis" addressed "To the Inhabitants of Pennsylvania" a refutation of the antimonarchical arguments of "Common Sense."⁷⁶ This address concerns us because its author professed, at least, to be willing to support independence as a last resort.⁷⁷ He used biblical citations to prove that monarchy was "not inconsistent with the Holy Scriptures" as claimed by "Common Sense." He declared that it was "as pleasing to the Almighty, if agreeable to the people, as any other form of Government"⁷⁸. He next pointed out that republics had proved quite as turbulent as monarchies, giving concrete examples, both ancient and modern.⁷⁹ His conception of a monarchy was apparently based upon

quoted were to be repeated to Mr. Houston, who with Bullock and Zubly represented Georgia in the Second Continental Congress. See *ibid.*, II, 422.

⁷¹*Ibid.*, II, 421.

⁷²*Biographical Congressional Directory*, 1136, and *National Cyclopaedia of American Biography*, III, 212.

⁷³*Journals of the Continental Congress*, III, 491.

⁷⁴Adams, *Works*, II, 423.

⁷⁵See, for example, his letter to General Gates, *Works*, I, 207. See also Walsh, *Political Science of John Adams*, ch. II, "Early Democratic Views."

⁷⁶*American Archives*, 4th ser., IV, 1527-1530.

⁷⁷*Ibid.*, 1530. For loyalist refutations see Tyler, *op. cit.*, I, 479-481.

⁷⁸*American Archives*, 4th ser., IV, 1529.

⁷⁹*Ibid.*, 1529-1530.

contract,⁸⁰ yet he upheld the hereditary principle, using the "terrible disorders" of the elective monarchy of Poland as a warning against the non-hereditary type.⁸¹ He also was bold enough to assert that England's own republican experiment had ended in the "absolute sway" of one man, Oliver Cromwell.⁸²

"Rationalis" was met on his own ground by a disimpassioned address signed "Salus Populi."⁸³ The main feature in this argument was that it admitted the ill success of earlier republics but contended that America had unprecedented opportunities for success in the adoption of such a form. A somewhat similar article a few months later⁸⁴ emphasized the importance of entirely reforming American government, rather than "patching up" the old one, and said that "there must never be any power like a Kingly power" in America.⁸⁵ It declared against hereditary tenure on the ground that "wisdom is not a birthright," and against life tenure because "men's abilities and manners may change."⁸⁶

On the other hand, an important expression of the monarchical views hinted at by Adams⁸⁷ has been preserved to us in an address which first appeared in the spring of 1776.⁸⁸ Carter Braxton, an aristocratic Virginian, a member of the Continental Congress, and a signer of the Declaration of Independence, was thought by

⁸⁰*American Archives*, 4th ser., IV, 1529-1530.

⁸¹*Ibid.*, 1530.

⁸²*Ibid.*, 1530.

⁸³"To the People of North-America on the Different Kinds of Government," *ibid.*, 4th ser., V, 180-183. Undated, but there placed under heading "March 1776."

⁸⁴"The Interest of America," unsigned, *ibid.*, 4th ser., VI, 840-843. Classed with material for June, 1776.

⁸⁵*Ibid.*, 842.

⁸⁶*Ibid.*, 843.

⁸⁷In his letter to James Warren, above, page 22.

⁸⁸"Address to the Convention of the Colony and Ancient Dominion of Virginia, on the subject of Government in general, and recommending a particular form to their consideration. By a native of the Colony." Printed in *American Archives* 4th ser. VI, 748-754. Originally published in pamphlet form at Philadelphia and reprinted June 8, 1776, in the "*Virginia Gazette*" with a view to influencing the state constitutional convention. J. Adams, *Works*, IV, 202, editor's note.

some to be the author.⁸⁹ Patrick Henry called it a "silly thing,"⁹⁰ and John Adams said it was "too absurd to be considered twice."⁹¹ Henry admitted, however, that his "most esteemed republican form" of government had "many and powerful enemies" in Virginia.⁹² It is difficult to judge how much sympathy the address in question aroused⁹³ among the "Barons of the South," as Adams termed the aristocratic Virginians.⁹⁴ It certainly produced little practical effect upon the Virginia constitution.⁹⁵ Yet its author seemed confident that his system was more truly adapted to the situation of America than the more purely democratic ones then advocated. Should the latter type be adopted, in the excitement of the moment, he felt sure it would not prove permanently satisfactory. As a result violent efforts would be made to restore the former system.⁹⁶ He praised the English constitution, perfected "by the vigilance, perseverance, and activity, of innumerable martyrs."⁹⁷ If any imperfections still remained they could be removed without the sacrifice of the entire structure. Former republican experiments were warnings rather than models.⁹⁸ After thus preparing the minds of his readers he unfolded before them a plan of state government in which the governor was elected by the representatives and held office "*during his good behaviour*."⁹⁹ The other features of the plan were of a similar nature. As for a more general government it would seem he had nothing in mind but a Congress with rather extensive powers but with no single

⁸⁹P. Henry to J. Adams, May 20, 1776, Adams, *Works*, IV, 201-202. Adams suggested it to be a "joint production of one native of Virginia, and two natives of New York." *Ibid.* IX, 387. For a brief account of Braxton see *Appletons' Cyclopaedia of American Biography* I, 361.

⁹⁰Patrick Henry to John Adams, May 20, 1776, Adams, *Works*, IV, 201-202.

⁹¹*Ibid.*, IX, 387.

⁹²*Ibid.*, IV, 201-202.

⁹³At any rate, Braxton was a member of the first house of delegates under the new constitution. *Appletons' Cyclopaedia*, 361. For a New York connection see John Jay to Edward Rutledge, July 6, 1776, *American Archives*, 5th ser., I, 41.

⁹⁴J. Adams, *Works*, I, 207; IX, 358, 388.

⁹⁵See charts in Channing, *History of the United States*, III, 459-462.

⁹⁶*American Archives*, 4th ser., VI, 749.

⁹⁷*Ibid.*, 750.

⁹⁸*Ibid.*, 751-752.

⁹⁹*Ibid.*, 752-753. (The italics are not in the original.)

executive head.¹⁰⁰ As a whole, however, his pamphlet is of considerable significance to a study of "monarchical" tendencies in the period.

Apparently some fears were confessed in 1776 that there was "not publick virtue enough in the country" as basis for a republic.¹⁰¹ Obviously the party in power generally discountenanced such fears. Thanks to the general trend of events and to the eloquent arguments of "Common Sense" republican enthusiasm rose high in 1776.¹⁰² Yet the following passage, written near the end of that eventful year, is at least suggestive: "If I may be permitted, then, to deliver my opinion of the genius of the *Americans* I shall say it is of a monarchical spirit; this is natural from the government they have ever lived under. It is therefore impossible to found a simple Republic in *America*. Another reason that operates very strongly against such a government is the great distinction of persons, and difference in their estates or property, which cooperates strongly with the genius of the people in favour of monarchy."¹⁰³

This brings us to the end of the pre-revolutionary period. Monarchical institutions had become extremely unpopular. Anti-monarchical forms of government were to have their trial. But if they were found wanting might not some men, remembering the seeming popularity of kingship in the earlier days, direct their efforts towards setting up an American kingship? Succeeding chapters of this study will answer this question in the affirmative.

¹⁰⁰*American Archives*, 4th ser., VI, 753-754.

¹⁰¹See J. Adams to Mrs. Warren, Jan. 8, 1776, cited above p. 22, also S. McClintock to William Whipple, Greenland, N. H., Aug. 2, 1776. *American Archives*, 5th ser., I, 734.

¹⁰²See above, pages 21-22.

¹⁰³Signed "Farmer" and written at "Philadelphia, Nov. 5, 1776." *American Archives*, 5th ser., III, 518. The article concerned government for the individual states but seemed also applicable to a general government. Compare letter by a New Hampshire man (in same volume, p. 1226), written in December, 1776.

CHAPTER II

MONARCHICAL TENDENCIES IN THE UNITED STATES DURING THE REVOLUTIONARY WAR: THE PLAN OF COUNT DE BROGLIE

Thomas Jefferson once remarked parenthetically of certain American army officers that they were "trained to monarchy by military habits."¹ The utilization of the army as a basis for monarchical institutions was, indeed, the common factor in several propositions. The first of these was of French origin and centered around Charles François, Count de Broglie.² The count had been a trusted secret agent of Louis XV in that monarch's attempt to put a French prince on the Polish throne as well as in other projects. The prestige which he gained by his early successes in the Seven Years' War was somewhat impaired by his later misfortunes in that conflict. Circumstances conspiring against him, he was for some time a much neglected personage, so far as court favor and public employment were concerned. By the eve of the American Revolution his fortunes had improved, but hardly enough to satisfy a man of his character and previous career.³ He seems to have been an inveterate enemy of England,⁴ a great lover of glorious schemes,⁵ and a man of much ambition.⁶

¹Preface to "The Anas," Jefferson, *Writings* (Ford ed.), I, 157. Compare Colonel Nicola's assertion, below, 45. See also below, page 40.

²Born 1719, died 1781. For brief notices see *Encyclopaedia Britannica* (11th ed.), IV, 626; P. Larousse, *Grand Dictionnaire Universel Français*, IV, 1300; F. Kapp, *Life of John Kalb*, 80; H. Doniol, *Histoire de la Participation de la France à l'Établissement d'Amérique*, I, 636-637. A longer account is found in pp. 389-404 of an article by C. J. Stillé, "Comte de Broglie, the Proposed Stadtholder of America," *Pennsylvania Magazine of History*, XI, 369-405.

³See Doniol, *op. cit.*, I, 636.

⁴See his "Mémoire" to Louis XVI, Doniol, *op. cit.*, II, 670-673, and, for English comments, Lord Stormont to Lord Weymouth, Feb. 6, 1777, B. F. Stevens, *Facsimiles of Manuscripts in European Archives Relating to America*, no. 1429.

⁵Such as securing the crown of Poland for a French prince (Stillé, *op. cit.*, 392-393), or sending an expedition to invade England, etc. (Doniol, *op. cit.*, II, 671-677). See also Kapp, *op. cit.*, 80.

⁶Doniol, *op. cit.*, II, 670; Kapp, *op. cit.*, 80, 93; Stillé, *op. cit.*, 389-391; *Deane Papers*, I, 429-431.

On November 5, 1776, the Count made two calls upon Silas Deane, American Agent at Paris. With him he brought Baron de Kalb,⁷ a German in French service, who had toured America in 1768,⁸ and wished to return there to aid the revolutionists. Kalb had been assistant quartermaster-general on Broglie's staff in the late war and had found in his superior officer a generous patron.⁹ Thus it was natural that he was selected as chief assistant in the plan which Broglie had at heart, and was used to present it to Deane. There is double proof that this presentation was accomplished by or before December fifth. On that day Kalb wrote to the Count reporting "good progress"¹⁰ and on the next Deane wrote to the Secret Committee of Congress as follows:¹¹ "I submit one thought to you: Whether if you could engage a great general of the highest character in Europe, such, for instance, as Prince Ferdinand, Marshal Broglio,¹² or others of equal rank to take the lead of your armies, whether such a step would not be politic, as it would give a character and credit to your military and strike perhaps a greater panic in our enemies. I only suggest the thought and leave you to confer with the Baron de Kalb on the subject at large."¹³ The specific proposition, as stated a few days later, centered about the suggested installation of Broglie as generalissimo of the American forces, with absolute military powers, and, perhaps, some civil authority. He was to be subordinate to Congress and to hold his position for no more than three years.

The plan and its attendant circumstances make a strong appeal

⁷*Deane Papers* (New York Historical Society Collections, XIX-XXII), I, 342.

⁸*Ibid.*, I, 342; Kapp, *op. cit.*, 50-51, 68.

⁹Kapp, *op. cit.*, 38, 79-80.

¹⁰This report was acknowledged by Broglie in a letter quoted by Kapp, *op. cit.*, 94.

¹¹*Deane Papers*, I, 404-405; F. Wharton, *Diplomatic Correspondence of the United States*, 392; etc. A short treatise on the affair, containing a number of quotations from the original correspondence, is found in Wharton, *op. cit.*, 392-396.

¹²The editor of the *Deane Papers* comments, "Deane confounds the Count Broglio with his brother, the Marshal and Duke," I, 404, n.

¹³See letter from Broglie to Kalb, December 11, 1776, and enclosure by Kalb, in a letter to Deane six days later, Kapp, *op. cit.*, 94-97; also in Doniol, *op. cit.*, the chapter, "Le Stathoudérat du Comte de Broglie;" II, 50-84, especially 62-74. For the enclosure mentioned see *Deane Papers*, I, 427-431; Stevens, *Facsimiles*, no. 604.

to the imagination and tempt one to unlimited conjecture. For instance, it is quite conceivable that Count Broglie's previous endeavors to set a French prince on the Polish throne¹⁴ suggested the idea of an elective monarchy for America. Broglie had in mind a man of the rank of "the Prince of Nassau" (stadtholder in the Netherlands) as meeting the requirements for his American generalissimo.¹⁵ If an elective monarchy should be installed the generalissimo would enjoy an unrivalled opportunity to win the "election." But with no actual proof of such ulterior motives it is more profitable to consider the potentialities of the plan itself and the impression it probably made upon those who knew of its existence.

America's supreme need for a leader who could unite factions, attract a brave and efficient personal following, and order all things by his own power,¹⁶ justified to Broglie the granting of the "most favorable stipulations" to induce the proper man to devote himself to the task. "Favorable stipulations" he defined as the union, in one person, of the "position of a general and president of the council of war with the title of generalissimo, field marshal, etc."¹⁷ No civil powers were demanded "with, perhaps, the single exception of the political negotiations with foreign powers."¹⁸ The elasticity injected by the terms "etc." and "perhaps" is rendered more significant by rereading one of the opening sentences of the letter, "A military and political leader is wanted,"¹⁹ noting the coördination of "political" with "military" as it stands there. In the formal presentation of the plan Kalb expressly left it to Franklin and Deane "to extend" as well as to change or carry out his propositions.²⁰

A further point, one connected with republican security, is of peculiar interest to the present study. Broglie, it appears, very much feared that the Americans might suspect that monarchical ambitions lurked behind his plan. Thus it was that he in-

¹⁴Stillé, *op. cit.*, 393. See also above, p. 27.

¹⁵Kapp, *op. cit.*, 95.

¹⁶*Ibid.*, 95. Broglie asserted that even "in a good European army everything depends upon the selection of a good commander-in-chief; how much more in a cause where everything has yet to be selected and adjusted." *Ibid.*, 96-97.

¹⁷*Ibid.*, 96.

¹⁸*Ibid.*, 95.

¹⁹*Ibid.*, 95.

²⁰Deane Papers, I, 431.

structed his agent to be "particularly explicit" in "the assurance of the man's return to France at the end of three years" since this assurance would "remove every apprehension in regard to the powers to be conferred, and . . . even the semblance of an ambitious design to become the sovereign of the new republic."²¹ Again, he warned Kalb to "content" himself "with stipulating for a military authority for the person in question."²² Finally he directed that these powers "should be limited in no respect, except in so far as to remove all danger of a too extensive use of the civil authority, or of ambitious schemes for dominion over the republic."²³

Kalb, in his formal statement of the project suggested, intentionally or otherwise, the expansion of which the plan was capable. For one thing he drew a clear-cut comparison between the situation of the United States and that of the Netherlands "when they were yet groaning under the . . . tyranny of their sovereigns." On this basis he suggested "that the same conduct which was so advantageous to the republican establishment of the Low Countries would produce the same effect in the present case."²⁴ He emphasized the strength of the personal following which his candidate would be able to command.²⁵ Moreover, he bore witness to the ambitious character of Broglie, as, for example, by his suggestion that the generalissimo's return to Europe be ensured "in a more precise manner" by a treaty clause securing Broglie's "elevation . . . to the dignity of Duke and Peer of France."²⁶

Kalb's connection with the plan is the more significant because of his mission to America at an earlier date. In reality an agent for the French minister Choiseul and sent out to investigate reports that a revolt was brewing in the English colonies²⁷ he had posed as "a German travelling for his pleasure."²⁸ His command of the English language and his ability to adapt himself to any

²¹Kapp, *op. cit.*, 96.

²²*Ibid.*, 96.

²³*Ibid.*, 97.

²⁴*Deane Papers*, I, 427.

²⁵*Ibid.*, 429.

²⁶*Ibid.*, 429-431.

²⁷Kapp, *op. cit.*, 46-51, 68-69.

²⁸Quoted from letter of Colonel N. Rogers, Jan. 24, 1810, *ibid.*, 315. (Rogers assigned too early a date to the visit.)

society had probably enabled him to collect evidence "everywhere, from the drawing-room down to the grog-shop."²⁹ An American friend³⁰ testified that Kalb had often told him of the observations made during this trip. According to this testimony Kalb had been struck by "the universal prepossession" in favor of England, and "the almost instinctive hostility" to France. On the basis of these observations he had later asserted that nothing but the "highly injudicious and short-sighted conduct of the British ministry" could have caused the colonists to revolt.³¹ Kalb's official reports, made within the year, were somewhat similar.³² They did, however, include a prophecy that American independence would eventually be declared,³³ though they predicted a peaceful conclusion to the controversy then raging.³⁴ They positively denied that, in case of a resort to force, the colonists would be willing to accept French aid.³⁵ It will be recalled that in 1768, the year of Kalb's visit, the Americans were still professing loyalty to the British King and reverence for British institutions, and casting the blame for existing conflicts upon the British ministry.³⁶

In the face of such observations how could Kalb support the project of Count de Broglie? Perhaps he did not realize the extent of its possibilities. Perhaps he believed the plan impracticable, even in its most limited application, but was unwilling to oppose his friend and patron.³⁷ Yet it is conceivable that he considered the plan practicable and advantageous to all concerned. As for the old antipathy to the French it would seem to be supplanted by petitions for French aid.³⁸ The American Declaration of Independence had forborne to attack monarchical institutions, despite its denunciation of the ruling King. Thus a European

²⁹Kapp, *op. cit.*, 315.

³⁰Colonel Rogers. He had been aide to Kalb at Valley Forge and elsewhere. *Ibid.*, 315, n.

³¹*Ibid.*, 315-316.

³²*Ibid.*, 286-295.

³³*Ibid.*, 287.

³⁴*Ibid.*, 288.

³⁵*Ibid.*, 288.

³⁶Above, p. 13.

³⁷On the relations of Kalb with Broglie see, for example, Kapp, *op. cit.* 86-87.

³⁸Such as those being made by Silas Deane.

might easily fail to realize the reaction against centralized power which had followed the Declaration.³⁹

Let us now turn to the fate of Broglie's plan in American hands. The available papers of Silas Deane contain no positive indication of his own opinion on the matter.⁴⁰ Contemporary characterizations of Deane were so influenced by the factional quarrels in which he was involved that it is difficult to estimate his probable attitude.⁴¹ If Deane was really vain, ambitious, and easily dazzled by the brilliancy of the French capital,⁴² he may have been a convert to the cause of Broglie. The thought that the plan was, perchance, secretly favored by the French Court may have led Deane to believe it could be put into effect. Kalb's support of the plan, in view of his personal observations in America, may have given it weight with Deane. The tendency to think the American cause hopeless, later evidenced by his support of English conciliatory proposals,⁴³ may have led him at this time to believe the American cause could not succeed unless it made use of French aid of the type suggested.

A more probable explanation is suggested by a report from Deane to John Jay respecting some supplies he was forwarding. He advised that they be examined for impositions, since he himself had been unable to examine them, they being guaranteed by "persons in such station" that a show of suspicion might have ruined his affairs.⁴⁴ He wrote in the same letter that he hoped the officers sent would "be agreeable," adding that they "were recommended by the Ministry" and were "really in their army," though this "must be a secret."⁴⁵ Franklin later wrote a defence of Deane which, though referring specifically to the affair of some French officers, may have had the Broglie plan also in mind.

³⁹This reaction was to be seen in the state constitutions and the organization of the Continental Congress. Thomas Pownall's suggestion of a British stadtholder for the colonies (as part of his plan for imperial reorganization) is very interesting in this connection. See Pownall, *Administration of the British Colonies*, II, 84-86. He believed this idea incorporated in the Albany plan of union.

⁴⁰On the fate of two lost volumes, see *Deane Papers*, I, intro., p. vii, and Jefferson, *Writings* (Washington ed.), II, 454-455.

⁴¹C. F. Adams, *Life of John Adams*, 280. (Vol. I of J. Adams, *Life and Works*.)

⁴²*Ibid.*, 249.

⁴³*Deane Papers*, I, pp. xii-xiii.

⁴⁴Dec. 3, 1776, *ibid.*, I, 395.

⁴⁵*Ibid.*, 397.

Its main point was that only a person on the spot could "know the infinite Difficulty of resisting the powerful Solicitations here of great Men, who if disoblighd might have it in their Power to obstruct the Supplies he [Deane] was then obtaining."⁴⁶

Apparently no direct evidence remains of the reception of the plan in America.⁴⁷ The recall of Deane in 1777 and the rejection of most of the officers sent by him⁴⁸ throw some light on the situation. The orders⁴⁹ for Deane's return were noncommittal as to the reason, but an undated motion based the recall on Deane's indiscretion in engaging French officers.⁵⁰ If Congress could not comply with such engagements "without deranging the Army, and thereby injuring, at this critical Juncture, the American Cause,"⁵¹ how much less would Congress have accepted the Broglie plan!

Little evidence appears as to the reaction of the general public to the plan. Deane's proposition of December 6, 1776 was printed in a Pennsylvania newspaper, February 16, 1779.⁵² This was done through the bad faith of Thomas Paine who had access to the letter when secretary to the Committee for Foreign Affairs.⁵³ The very manner of its publication probably lessened its effect. Samuel Adams said, speaking of another episode in Paine's attack

⁴⁶Franklin, *Writings* (Smyth ed.), VII, 77. It will be recalled that Franklin and Arthur Lee were made joint commissioners with Deane late in 1776. Up to that time Deane was our sole representative in France. See C. Isham, "A Short Account of the Life and Times of Silas Deane," *American Historical Association Papers*, III, 41-43.

⁴⁷See Wharton, *Diplomatic Correspondence*, I, 396.

⁴⁸Kapp, *op. cit.*, 306.

⁴⁹Resolution of Nov. 21, 1777, *Journals of the Continental Congress*, IX, 946-947. Order of Dec. 8, 1777, *ibid.*, 1008-1009. The activity of Deane's friends in Congress was said to account for the character of the recall. See S. Adams, *Writings*, IV, 71.

⁵⁰Quoted in *Journals*, VIII, 605, n. 2. This probably was made on or about Aug. 5, 1777. Compare S. Adams, *Writings*, IV, 14.

⁵¹*Journals*, VIII, 605, n. 2. A very practical reason for this attitude was found in the threatened resignations of such officers as Generals Greene and Knox in case they were superseded by French officers. *Journals*, VIII, 537; Washington, *Writings* (Ford ed.), V, 404-406, n. Compare S. Adams, *Writings*, IV, 14.

⁵²Deane *Papers*, III, 361-362. (The paper mentioned was the *Pennsylvania Packet*.)

⁵³This committee was successor to the Committee of Secret Correspondence. See *Journals of the Continental Congress*, VII, 274.

on Deane, that its nature was such that Paine's "prudence . . . and even his Veracity was called in Question . . . and his Authority & Influence as a Writer of facts lessend."⁵⁴ Very likely the letter in question was suppressed as much as possible through a fear that its exploitation might anger the French court.⁵⁵

John Adams in 1778 recalled having heard of the French project in Congress the preceding year. Curiously enough he connected it with Marshal Maillebois.⁵⁶ Having heard that this gentleman and Marshal Broglie⁵⁷ were reputed to be "the two most intriguing men in France," he wrote, "I was the more disposed to believe it of the former, because I knew of his intrigue with Mr. Deane to be placed over the head of General Washington in the command in chief of our American army."⁵⁸ A chance remark by Vergennes was noted by Adams as confirmation "of the design at court, of getting the whole command of America into their own hands, and a luminous commentary on Mr. Deane's letters, which I had seen and heard read in Congress, and on his mad contract with M. du Coudray and his hundred officers."⁵⁹ Adams recorded his own attitude as follows: "My feelings, on this occasion, were kept to myself, but my reflection was, 'I will be buried in the ocean, or in any other manner sacrificed, before

⁵⁴S. Adams, *Writings*, IV, 134. Contrast the statement by Charles Lee, *Lee Papers*, III (*New York Historical Society Collections*, VI), 344, n. Lee stated that Deane had been accused of having "made some overtures to Prince Ferdinand of Brunswick, to accept the command of the American army," the very idea of which appeared "so very ridiculous" to "the foreign officers . . . acquainted with the prince's reputation as a soldier" that a mention of it threw them "into violent fits of laughter."

⁵⁵S. Adams, who probably saw the letter of Dec. 6, 1776 (see *Journals of the Continental Congress*, VIII, 596), wrote that sitting "by a fire Side" with a friend he might tell things about Deane which he dared not write. S. Adams, *Writings*, IV, 111.

⁵⁶M. Dubois (Broglie's secretary) hinted at the existence of competition for the position Broglie desired. Letter to Kalb, Dec. 17, 1776, Kapp, *op. cit.*, 92.

⁵⁷The Marshal (or Duke) de Broglie does not appear to have had any share in his brother's project. It is worthy of note that Kalb gave Adams a letter of introduction to Count de Broglie when Adams was about to depart for France in 1777. J. Adams, *Works*, VII, 9.

⁵⁸*Ibid.*, III, 146.

⁵⁹*Ibid.*, III, 146. See also Stillé, *op. cit.*, 376-377, n. 1.

I will voluntarily put on the chains of France, when I am struggling to throw off those of Great Britain."⁶⁰

This probably expressed the sentiments of all, or practically all, of the Americans who heard of the Broglie plan. While they professed to feel much gratitude to the French King⁶¹ it did not extend, in general, to French officers. So far as any resultant exaltation of kingship was concerned this admiration for the French King was counterbalanced by the growing conviction that the British King, and not the ministry, was responsible for the war.⁶² Doubtless the American poet, Freneau, writing in 1778, was warmly seconded when he said that nothing good could be said in behalf of kings in general, despite occasional good kings, and that,

"Though one was wise, and one Goliath slew,
Kings are the choicest curse that man e'er knew."⁶³

If Count de Broglie⁶⁴ continued to cherish the project he must have been disillusioned, late in 1778, by the following letter from his chief agent in the affair:

"They [the Americans] are insultingly vain towards any nation but their own. . . . they have established their sovereignty alone without help (whereas they owe it to France) against the bravest and most powerful of nations; their General Washington is the first of all heroes ancient and modern; Alexander, Condé, Broglie, Ferdinand and the King of Prussia are not to be compared to him. . . . It is not only the lower classes;—clever people, or those passing for such, have the same opinion, and this is said so often, that Washington believes it himself."⁶⁵

In the summer of 1780 an offer of negotiations looking towards

⁶⁰J. Adams, *Works*, III, 146-147.

⁶¹See *Journals of the Continental Congress*, XII, 1139; J. Bowdoin to Franklin, May 1, 1780, *Massachusetts Historical Society Proceedings*, 2d ser., VIII, 285, 290; and President of Congress to Franklin, Oct., 1781, *Papers of the Continental Congress*, vol. 16, *President's Letter Book*, 1781-1787, Manuscripts Division, Library of Congress.

⁶²J. Armstrong to W. Armstrong, Feb. 26, 178-, *William Armstrong Papers* (Force Transcripts), Manuscripts Division, Library of Congress; Franklin to D. Hartley, Feb. 3, 1779, Franklin, *Writings* (Smyth ed.), VII, 226, 227.

⁶³Quoted in Tyler, *Literary History of the American Revolution*, II, 253.

⁶⁴He did continue to plot against the British. See above, footnote 4, chapter II.

⁶⁵Kalb to Broglie, Nov. 7, 1778, Stevens, *Facsimiles*, no. 1987.

reunion with the mother country was made to the Vermonters.⁶⁶ The offer appeared at an opportune time since the Green Mountain state was in a critical situation in 1780, and, indeed, during the following year. Thwarted in attempts to gain admittance to the Confederation,⁶⁷ threatened with a renewal of hostilities by her rivals New York, New Hampshire, and Massachusetts,⁶⁸ and peculiarly open to military invasion from Canada,⁶⁹ the state stood in need of some new expedient.

The offer was accepted by a small group of leading Vermonters, such as Governor Chittenden and Ethan and Ira Allen,⁷⁰ and the resulting negotiations were terminated only by the end of the war.⁷¹ As carried on by the Vermonters their main characteristics may be listed as follows: First, a prolongation of the affair by repeated delays and postponements;⁷² second, as a chief excuse for such a prolongation, the plea that only a cautious and gradual preparation would bring the mass of the people to the point of accepting the plan;⁷³ third, protestations of sincerity to the British on the one hand,⁷⁴ and on the other insinuations to the Americans that the real object was to deceive the enemy and to promote the

⁶⁶*Vermont Historical Society Collections*, II, 59-61. General Haldimand, Governor of Canada, was the chief British intermediary. The sources for a study of this episode are found in the "Haldimand Papers" and supplementary data printed in the *Vermont Historical Society Collections*, II, 59-366. Some of the more important secondary accounts are in the volume just cited, pages 367-391, and in Ira Allen, *History of Vermont* (as reprinted in *Vermont Historical Society Collections*, I), 414-468; B. H. Hall, *History of Eastern Vermont*, 380-381, 412-414, 503, 721-724; J. L. Heaton, *The Story of Vermont*, 81-85, 87; S. Williams, *History of Vermont*, II, 201-218.

⁶⁷*Vermont Historical Society Collections*, I, 373, 381, 401, 409, 452, 464; II, 24, 200; Williams, *op. cit.*, II, 217-218.

⁶⁸*Vermont Historical Society Collections*, II, 30, 61, 86; also I, 330, 399-400, 419-420.

⁶⁹*Ibid.*, II, 61, 86; and I, 419-420.

⁷⁰Principally Colonel Ira Allen, Governor Chittenden, Major Fay, General Ethan Allen, and a few others, possibly including the majority of the governor's council. See *ibid.*, I, 428; II, 128, 159, 367. See also *Report on Canadian Archives*, 1889, 58.

⁷¹General Haldimand's last letter on the subject of Vermont was dated March 25, 1783. *Vermont Historical Society Collections*, II, 335.

⁷²For examples see *ibid.*, II, 109-116, 122-123, 128, 143, 159, 191, and especially 335.

⁷³*Ibid.*, II, 109-110, 112, 114, 122, 128, 143, 159, 172.

⁷⁴*Ibid.*, II, 113, 128, 129, 158. The British apparently doubted this sincerity at times. See *ibid.*, II, 145, 148-149, 152, 158, 162, 179, 265, 273.

common cause by halting incursions from the north; ⁷⁵ fourth, as the fundamental justification of their activities the assertion that the well-being of Vermont as a free and independent state, unhampered by New York or any other usurping rival, was a more cherished object with Vermonters than even the success of the revolutionary cause, in case the latter should not assure the former.⁷⁶

The popular interpretation of these dealings has represented them as legitimate strategic deceptions of war, cleverly employed against the British.⁷⁷ But the lack, at the time, of a long-standing ideal of national existence, and the lack of cordiality towards Vermont on the part of the other states and Congress⁷⁸ give some basis for a different conclusion. While there is no reason to believe that the negotiators preferred Vermont's union with Great Britain, even as a separate province, to admittance, as a "free and independent state," to the Confederation⁷⁹ it is quite possible that some of the leading citizens of Vermont contemplated a return to the old allegiance as a last resort. In that event they expected support, not only from the Tories of the state but also among some of the rebels who had no preference for the "tyranny" of

⁷⁵*Vermont Historical Society Collections*, II, 131, 135, 203. Compare 255. Vermont profited, during the remainder of the war, by what amounted to an immunity from attack by the British who wished to do nothing that would endanger the final success of the negotiations. Williams, *History of Vermont*, II, 215-216.

⁷⁶*Vermont Historical Society Collections*, II, 109, 110-111, 117, 123, 128, 143, 191, 200, especially 117 and 123 and 158. Compare *ibid.*, 57, n. 1, 151, 200, 202, 265. B. H. Hall, in his *History of Eastern Vermont*, 413-414, presents some interesting anecdotes bearing on this point.

⁷⁷Such treatment may be found in any of the accounts cited above, p. 36, n. 66, with the possible exception of Ira Allen's *History of Vermont*.

⁷⁸Governor Chittenden besought military coöperation from various other states on the score that one of the alternatives for the Vermonters was to "be under the disagreeable necessity of making the best terms with the British that may be in their power" as any state might do "separately considered from their union." *Vermont Historical Society Collections*, II, 6, 34.

⁷⁹They undoubtedly hoped that the realization that Vermont might renew her old allegiance to Great Britain would induce Congress to treat the state with more consideration than formerly. *Ibid.*, II, 9, 23-34, 148, 158; and I, 429. Compare and contrast Ethan Allen's assertions to Lord Dorchester in 1788, *Report on Canadian Archives, 1890*, State Papers, Calendar, 211.

Congress over the tyranny of Parliament and the King.⁸⁰ The situation of a royal province, with "every prerogative and immunity which is promised to other provinces," provided for a measure of local autonomy⁸¹ which might appear attractive to Vermont, more eligible alternatives failing.

On the other hand, too much emphasis can hardly be put upon the conclusion that the mass of the people of Vermont were undoubtedly opposed to reunion with Great Britain. Their own actions, the statements of Allen and the other negotiators, and the final opinion of Lord Haldimand all confirm this view.⁸² The latter's comment to Sir Henry Clinton, in October, 1781, is to the point. After stating that his "suspicions of Allen's party" are "almost, if not entirely, removed" he continued as follows: ". . . I see, with much concern, that the wished for revolution very little depends upon their⁸³ interest, at least as things are at present circumstanced. The prejudice of a great majority of the populace, and the prevailing influence of Congress, are too powerful to admit of a chance, (within any given time from one to three years,) by negotiation."⁸⁴

Most significant to the present study is the fact that the negotiators made no special point of the superiority of republican to monarchical government. Instead they weighed their practical difficulties with Great Britain against those with their neighbors and the Confederation, without throwing theoretical advantages or disadvantages into the scale on either side.⁸⁵

⁸⁰Compare *Vermont Historical Society Collections*, II, 110, 117, 123, 158; I, 417. B. H. Hall states that the anger of the Vermonters against Congress rose so high after the congressional resolutions of December 5th, 1782, that many of a group at Westminster "damned the Congress, and for the toast drank their confusion, and the health of King George the Third of England." Hall, *History of Eastern Vermont*, 478.

⁸¹The French consul Crèvecoeur in a letter from Boston, July 27, 1787, expressed his belief that "les Vermontois n'y attachent plus la même importance" as formerly to a recognition by Congress of their independence. Letter to the Duke of Harcourt, C. Hippeau, *Le Gouvernement de Normandie*, III, 141-142. Ira Allen, in the negotiations in question, urged neutrality as the best stand for Vermont for the duration of the war. *Vermont Historical Society Collections*, II, 110.

⁸²For a variety of evidence on this point see *ibid.*, I, 437, 460; II, 7, 77-80, 130, and especially 150, 179; also Williams, *History of Vermont*, II, 214-215.

⁸³The reference is to the men of "Allen's party."

⁸⁴*Vermont Historical Society Collections*, II, 179.

⁸⁵Apparently and perhaps actually they upheld the dictum expressed in a couplet

The American victory at Yorktown and especially the return of peace which it forecast, operated powerfully to check whatever monarchical tendencies may have existed in Vermont.⁸⁶ Freed from the fear of military aggression, without the heavy burden of war debt under which her neighbors groaned, Vermont entered upon a period of peace and prosperity which, for a time, lessened her desire for admission to equal coöperation with the thirteen confederated states.⁸⁷ But the cessation of serious military activities brought to a head difficulties in another quarter, namely, the military encampment at Newburgh. The tendency to exalt General Washington, noticeable during the latter years of the War,⁸⁸ was about to reach an astounding climax in propositions to erect an American monarchy with Washington at its head. These propositions will be discussed in the following chapter.

by Pope which Ethan Allen is said to have had on the tip of his tongue [though he thundered it forth in quite a different connection than the case above noted]:

"For forms of government, let fools contest,
What e'er is best administer'd, is best."

B. H. Hall tells this anecdote in his *History of Eastern Vermont*, 342-343.

References were made, on the Vermont side, to the "Whig" principles of many of the Vermonters as a reason for delay in the negotiations (see for example *Vermont Historical Society Collections*, I, 435), but these principles were not made a point of defense or argument, unless the passages in the same volume, pages 117 and 123, be considered such, and these are not necessarily antimonarchical.

⁸⁶*Ibid.*, II, 191, 251, 335; *Report on Canadian Archives*, 1889, 53, 58.

Nevertheless, even after news of peace had been received, the governor and council of Vermont apparently sought the advice of the Canadian governor as to the best course for Vermont to follow. See Ira Allen's account, *Vermont Historical Society Collections*, I, 467-468. An attempt to revive the reunion movement was made during the last months of Vermont's campaign to become the "fourteenth state." See below, pages 110-114.

⁸⁷For assertions as late as 1794 that Vermont would not stand with the rest of the United States in case of war against England but would "support a neutrality" or "make the best bargain they can for themselves" see respectively "Governor Simcoe to Mr. Dundas" (*Report on Canadian Archives*, 1889, 57), and "Statement by Mr. Jarvis" (*ibid.*, 58). These assertions were based on remarks of "very respectable people of Vermont."

⁸⁸Illustrated by the letter from Kalb to Broglie, above, page 35, and by the following:

Massachusetts Historical Society Proceedings, VII, 167; *New Jersey Archives*, 2d series, II, 135-137; "Belknap Papers," I (*Massachusetts Historical Society Collections*, 5th ser., II), 91, 300; Humphreys, *Life of David Humphreys*, I, 242; Charles Lee, *Papers*, III, 322, 372, 400-401; *Massachusetts Historical Society Collections*, 4th ser., X, 804.

CHAPTER III

MONARCHICAL TENDENCIES AT THE CLOSE OF THE REVOLUTIONARY WAR: THE PLAN OF COLONEL NICOLA

Probably the most dangerous problem during the months of uncertainty immediately following the Yorktown campaign was the unpaid and discontented army which had won the war. It has been said that "in the spring of 1782, the army would have made Washington king."¹ Lack of complete evidence may forever make impossible a final test of the truth of such a statement, but some definite conclusions may be drawn from the material available. Jefferson, ever alert to detect "monarchical" tendencies, believed that there had been "a cabal of the officers of the army who proposed to establish a monarchy and to propose it to General Washington."² Again he wrote: "Some officers of the army, as it has always been said and believed . . . trained to monarchy by military habits, are understood to have proposed to Genl. Washington . . . to assume himself the crown, on the assurance of their support."³ He declared that "Steuben and Knox have ever been named as the leading agents"⁴ and further implicated "Rufus King and some few civil characters" in the plot.⁵ Washington "frowned indignantly at the proposition, [according to the information which got abroad,]" The supporters of the intrigue "never dared openly to avow it," knowing that popular opinion would oppose it.⁶ Probably Jefferson had in mind rumors which had developed about the Newburgh Address and its attendant circumstances. But the most

¹C. L. Becker, *Beginnings of the American People* (*The Riverside History of the United States*, I), 273. Compare J. Fiske, *Critical Period of American History*, 107; R. Hildreth, *History of the United States*, II, 421-422; and J. Sparks, *Writings of Washington*, VIII, 300-301, 301-302, n.; also W. C. Ford's edition of Washington's *Writings*, X, 22-24, n.

²Notes on Marshall's *Life of Washington*, Jefferson, *Writings* (Ford ed.), IX, 262, n. 1.

³Preface to "The Anas," Jefferson, *ibid.*, I, 157.

⁴*Ibid.*, I, 157.

⁵*Ibid.*, IX, 262, n. 1.

⁶*Ibid.*

definite and unequivocal monarchical propositions that have ever come to light are those made by Colonel Lewis Nicola in his letter to Washington May 22, 1782.⁷

Colonel Nicola was an Irishman by birth. Some time after rising to the rank of major in the British army he came to Philadelphia. This was about 1766, a period when a newcomer would probably have been impressed by the idea that the King—and kingship—were cherished by the Americans. He became an officer in the revolutionary army and was respected for his activities, especially as an organizer.⁸ He had occasion, several times, to address General Washington in behalf of himself or as spokesman for other officers.⁹ The courteous attention he received encouraged him ¹⁰ to approach Washington on the subject of an American monarchy. He explained that he had previously kept his ideas on the subject “within [his] own breast” because “Republican bigots [would] certainly consider [his] opinions as heterodox, and the maintainer thereof as meriting fire & faggots.” He was confiding them now to Washington only in the strictest confidence and with the expectation of possible disapproval on the part of the latter, for, as he put it, “By freely communicating them to your Excellency I am persuaded I run no risk, & that, tho disapproved of, I need not apprehend their ever being disclosed to my prejudice.”¹¹ On the other hand, in begging Washington to suspend judgment till he should have gone through “the whole, & not to judge of it by parts,”¹² Nicola certainly acknowledged a hope that Washington’s final judgment might favor his propositions.

In explaining why he was broaching the matter at that particular time Nicola wrote:

“Possibly the event I foresee, may not, if at all, take place for a considerable time, but as that is uncertain, the purpose of the

⁷This is the date assigned by the authorities of the Library of Congress, Manuscripts Division.

⁸Born in Dublin, 1717, died c. 1807; *New International Encyclopaedia*, XVII, 134-135.

⁹See *Washington Papers, Correspondence with the Officers, Index*, 2713-2714.

¹⁰As he states at the opening of his letter containing the propositions. *Washington Papers*, vol. 198.

¹¹“Nicola Propositions,” p. 7, *ibid.*

¹²Nicola to Washington, May 22, 1782, *ibid.*

enclosed of moment, & must require mature deliberation, I choose not to defer mentioning it any longer."¹³

The army had been patient and long suffering, according to Nicola, for it had realized that the "particular circumstances of the times" had occasioned many of the injuries they had suffered. But "as the prospect of publick affairs cleared up, the means of fulfilling engagements encreased, yet the injuries, instead of being lessened, [had] kept pace with them." Nicola at no time questioned the good faith of Congress, but he apprehended that their good intentions could not be carried out because of "schemes of economy in the legislatures of some States, & publick ministers, founded on unjust & iniquitous principles." Under such circumstances there was a "dismal prospect" that when the army's services were no longer needed the army would be neglected and its members in many cases be reduced to beggary.¹⁴ Nicola offered some interesting evidence to show that he was by no means alone in his forebodings, writing, "From several conversations I have had with officers, & some I have overheard among soldiers, I believe it is generally intended not to seperate after the peace 'till all grievances are redressed, engagements & promises fulfilled. . . ."¹⁵

When one attempts to picture the actual carrying out of such intentions the bloody scenes of a civil war appear in the foreground. Nicola, however, expressly disclaimed such an outcome. "God forbid we should ever think of involving that country we have . . . rescued . . . into a new scene of blood & confusion," he exclaimed. Yet the members of the army were equally determined to claim their just rewards in order to provide for the subsistence of themselves and their families. The implied solution was to let them try their hand at constitution making, their brethren in civil life having failed so miserably in their attempts.¹⁶ Such action seemed doubly reasonable to Nicola. In the first place, the members of the army had not been consulted "personally or representatively" in the framing of the governments under

¹³Nicola to Washington, May 22, 1782, *Washington Papers*, vol. 198

¹⁴"Nicola Propositions," p. 1, *ibid.* Also *ibid.*, p. 2.

¹⁵*Ibid.*, p. 2.

¹⁶*Ibid.*, p. 2.

which they were living.¹⁷ In the second place, Nicola thought that the plan he had prepared had sufficiently provided for the general welfare¹⁸ to be generally accepted, without any armed conflict.

Four features of his plan are of especial importance. First, his well argued defense of the superiority of monarchical features in governments and particularly in the "mixed government" of Great Britain; second, the connection with the plan of a military colony "to the west;" third, the attention to detail evidenced in much of the plan; fourth, the offering of the position of king to General Washington.

In defense of monarchy Nicola wrote as follows:

"I own I am not that violent admirer of a republican form of government that numbers in this country are; this is not owing to caprice, but reason & experience. Let us consider the fate of all the modern republicks of any note, without running into antiquity, which I think would also serve to establish my system."¹⁹

As may be expected the "republicks" which he considered were "Venice, Genoa, & Holland." These had, he said, "shone with great brightness, but their lustre [had] been of short duration, and as it were only a blaze." The reduced political importance of the Netherlands in particular concerned him, because of the "great similarity" between their form of government and that of the United States. In contrast, as he noted, the "principal monarchies of Europe" despite many difficulties, still shone with brilliancy. Even absolute monarchy was "more beneficial to the existence of a nation" than the republican form.²⁰ But better than this was the mixed form of government which had been most nearly perfected in England, as a result of "repeated struggles between prince & people."²¹ Even this was "still short of perfection," but—and this is very important—the defects were of a nature to be easily excluded from the constitution of an American

¹⁷They had, instead, been "engaged in preventing the enemy from disturbing those bodies which were entrusted with that business." "Nicola Propositions," p. 2.

¹⁸*Ibid.*, p. 7.

¹⁹*Ibid.*, p. 2.

²⁰*Ibid.*, p. 3.

²¹*Ibid.*, p. 4.

"mixed government." The remedies were to confine representation to counties and a "few large trading cities," giving the franchise to "all contributing to the support of government," and to make elections annual; also to secure the dependence of the king by allowing him "no command of money beyond what is requisite to the support of his family & court, suitable to the dignity of his station." Thus improved, "the constitution would approach much nearer to that degree of perfection to which sublunary things are limited." Another essential feature to the best "mixed government" was probably "some degree of nobility" but this, he conceived, might be "limited . . . not hereditary."²²

Nicola then proceeded to the more concrete part of his suggestions. He pointed out that Congress as well as some of the states had already "promised all those that continue in the service certain tracts of land, agreeable to their grades. . . ." To insure justice, said Nicola, "they ought all to be put on a footing" by the United States, with no discriminations between men from different states nor between those in the army at the close of the war and those earlier dismissed" through schemes of economy.²³ He continued:

"These things premised, I think Congress should take on itself the discharging all such engagements . . . by procuring a sufficient tract in some of the best of those fruitful & extensive countries to the west of our frontiers, so that each individual should have his due, all unprofitable mountains & swamps, also lakes & rivers . . . not to be reckoned as any part of the lots, but thrown in [for] the benefit of the whole community. *This tract to be formed into a distinct State under such mode of government as those military who choose to remove to it may agree on.*"²⁴

The attention to detail, already noted, is most prominent in the next few paragraphs which deal with remedies for the depreciation of notes, the liquidation of public debts by instalments, one "to be paid immediately, to enable the settlers to buy tools for trades & husbandry, & some stock," provisioning the emigrants

²²"Nicola Propositions," p. 4. (Note the similarity between these points and later reform platforms in England. Note also that the provision for annual elections might well be expected by Nicola to win favor for his plan from persons who might otherwise oppose it as too undemocratic.)

²³*Ibid.*, p. 4.

²⁴*Ibid.*, p. 5. (The italics are not in the original.)

at continental expense till sometime after the harvesting of the first crop, and so on.²⁵ This feature of the plan is of importance because it indicates that Nicola had given the subject much attention and quite probably had been present at group discussions of similar schemes.

It was at this point that Nicola at last ventured to make his most startling suggestion, which was as follows:

"This war must have shewn to all, but to military men in particular the weakness of republics, & the exertions the army has been able to make by being under a proper head, therefore I little doubt, when the benefits of a mixed government are pointed out & duly considered, but such will be readily adopted; in this case it will, I believe, be uncontroverted that the same abilities which have lead us, through difficulties apparently unsurmountable by human power, to victory & glory, those qualities that have merited & obtained the universal esteem & veneration of an army, would be most likely to conduct & direct us in the smother paths of peace."²⁶

Waxing bold with enthusiasm Nicola declared, "Some people have so connected the ideas of tyranny & monarchy as to find it very difficult to separate them, it may therefore be requisite to give the head of such a constitution . . . some title apparently more moderate, but if all other things were once adjusted I believe strong arguments might be produced for admitting the title of king, which I conceive would be attended with some material advantages."²⁷

In closing he returned once more to the idea of a western colony citing its services as a reason for the adoption of his plan by the country. He wrote:

"I have hinted I believed the United States would be benefited by my scheme, this I conceive would be done, by having a savage & cruel enemy separated from their borders, by a body of veterans, that would be as an advanced guard, securing the main body from danger. There is no doubt but Canada will some time or other be a separate State, and from the genius & habits of the people,

²⁵"Nicola Propositions," pp. 5-6. The cost of the provisions mentioned was to "be deducted from each non commissioned & private mans debt" with the exception of provisions needed during the interval before the "accounts [were] all adjusted & the troops ready to march."

²⁶*Ibid.*, pp. 6-7.

²⁷*Ibid.*, p. 7.

that its government will be monarchical. May not casualties produce enmity between this new State & our Union, & may not its force under the direction of an active prince prove too powerful for the efforts of republicks? It may be answered that in a few years we shall acquire such vigour as to baffle all inimical attempts. I grant that our numbers & riches will encrease, but will our governments have energy enough to draw them forth? Will those States remote from the danger be zealously anxious to assist those most exposed? Individuals in Holland abound in wealth, yet the government is poor & weak."²⁸

Washington's stern rebuke to Nicola is far better known than is Nicola's presentation of his case.²⁹ One may well agree with Professor Channing that "Washington's reply is, possibly, the grandest single thing in his whole career."³⁰ It deserves praise, not only for its spirit of renunciation, but also for its recognition that the American people had become fundamentally anti-monarchical in sentiment. Yet someone should speak in behalf of Nicola. He too, despite his errors of judgment and his personal—even selfish—interest, wished well to America.³¹ Probably the country, more than once, has been rescued from disaster by the tremendous powers of its chief executive, especially in time of war. There have been occasions when Nicola, could he be imagined as an interested though invisible spectator, might have reflected that some of the features of his plan had actually been put into force.

Attention should be called to another letter to Washington written but a month after the Nicola propositions. It vividly

²⁸"Nicola Proposition," p. 7.

²⁹Washington to Nicola, May 22, 1782, *Washington Papers*, vol. 198, Manuscripts Division, Library of Congress. Washington, *Writings* (Sparks ed.), VIII, 300-301; *ibid.* (Ford ed.), X, 21-22. A brief summary of Nicola's propositions and two quoted paragraphs are given by Sparks in a footnote, VIII, 301-302. Sparks believed Nicola was voicing the sentiments of a party in the army, "neither small in number, nor insignificant in character . . ." Ford follows Sparks. See Washington's *Writings* (Ford ed.), X, 22-24 n. Nicola's secret was faithfully kept. Other men were, by rumor, connected with a monarchical plot of 1782 but not Nicola. See, for example, the *Aurora*, Aug. 30, 1800, p. 2, where Hamilton is accused in a letter dated April 25, 1795.

³⁰Channing, *History of the United States*, III, 376.

³¹The three letters of apology which he wrote to Washington help one to understand Nicola and his motives. As they appear not to have been printed elsewhere they are given in full in an appendix to the present study. See below, pages 129-134.

expressed a feeling of despair over the existing situation, and suggested an "absolute Monarchy, or a military State," as the only salvation "from all the Horrors of Subjugation."³² Its writer, like Nicola, was interested in a colony, to the west, as shown by his later prominent connection with the Ohio Company.³³ The letter was written by Major General James Mitchell Varnum under the heading "Providence, June 23^d 1782." Varnum was, at the time, an officer in the Rhode Island militia and a member of Congress,³⁴ having previously resigned his commission as Brigadier General in the Continental army.

After referring to certain other subjects he burst forth with this exclamation:³⁵

"Such is the dreadful Situation of this Country that it is in the Power of any State to frustrate the Intention of all the others— This Calamity is so [manuscript torn at this point] Founded in the Articles of Confederation, and will continually increase 'till that baseless Fabric shall yield to some kind of Government, the Principles of which may be correspondent to the Tone of the Passions. The Citizens at large are totally destitute of that Love of Equality which is absolutely requisite to support a democratic Republic: Avarice, Jealousy & Luxury controul their Feelings, & consequently, absolute Monarchy, or a military State, can alone rescue them from all the Horrors of Subjugation.—The circulating Cash of the Country is too trifling to raise a Revenue by Taxation for supporting the War,—& too many of the People are obstinately averse to those artificial Aids which would supply its Deficiency. In this Situation every Moment augments our Danger, by fixing the Habits of Licentiousness, and giving Permanency to British Perseverance: And should Dejection in our Ally proceed to Misfortune,³⁶ the Instability of national Policy may give Place to the Sentiments of the mediating Powers, 'that we are too young to

³²General J. M. Varnum to General Washington, June 23, 1782, *Washington Papers*, vol. 198, Manuscripts Division, Library of Congress.

³³See, for example, A. B. Hulbert, *Pilots of the Republic*, 119, and S. P. Hildreth, *Pioneer History*, 246-247.

³⁴*Appletons' Cyclopaedia of American Biography*, VI-VII, 261. On the ability and standing of Varnum as a lawyer see A. C. McLaughlin, *The Confederation and the Constitution (The American Nation: A History, X)*, 152.

³⁵Varnum to Washington, June 23, 1782, *Washington Papers*, vol. 198.

³⁶This refers, no doubt, to the naval victory of Rodney over de Grasse, the middle

govern ourselves.'—At all Events, this Country hangs upon the Issue of the present Campaign! If a great Exertion could be made, . . . to repossess ourselves of New York, we may possibly realize the Blessings of Independence; But Time alone will unfold the Decrees of Fate."

General Washington's answer to Varnum was very different from the one he had written to Nicola.³⁷ He observed that Varnum's state had met its obligations better at least than the other states. He added that "tho' the conduct of the people at large" was "truly alarming" he could not "consent to view" the situation "in that distress light" in which Varnum saw it. He concluded with the hope that even yet "some fortunate Crisis will arrive, when those destructive passions, which I confess too generally pervade all Ranks, shall give place to that love of Freedom which first animated us in this Contest."

Six years later General Varnum delivered the first Independence Day oration at Marietta, Ohio.³⁸ Part of his remarks on that occasion were so pertinent to the subject of the letter just considered that they should be considered at this point. He said in part:

" . . . the articles of the confederation, founded upon the union of the states, were so totally defective in the executive powers of government, that a change in the fundamental principles became absolutely necessary, and but for those friendships which have formed and preserved an union sacred to honor, patriotism, and virtue, and, but for that superior wisdom which formed the new plan of a federal government, now rapid in its progress to adoption, the confederation itself, before this day, would have

of April, 1782. (On this victory see Van Tyne, *The American Revolution*, 328.) Compare letter by Washington to R. R. Livingston, May 22, 1782, *Washington Papers*, 198.

³⁷Under date of July 10, 1782, *Washington Papers*, vol. 198. Perhaps Washington made some allowance for what appears to have been the rather excitable temper of the man. See G. Morris on Varnum, Washington, *Writings* (Ford ed.), VII, 30, n. 1. An odd characterization by T. Rodney (in Congress with Varnum), April 13, 1781, is as follows: "A resolution was moved by Genl Varnum . . . by words like the Man himself . . . fine . . . but not well adapted to the occasion." T. Rodney, *Diary*, 38-39, Manuscripts Division, Library of Congress. Washington's previous correspondence with Varnum shows that they had been mutually concerned over the mutinous spirit in the army. Washington, *Writings* (Ford ed.), VII, 328, n.

³⁸Hildreth, *Pioneer History* 504.

been dissolved! Then, indeed, might we have 'hung our harps upon the willows, for we could not have sung in a strange land.' Then we might have lamented, but could not have avoided the horrors of a civil war. Promiscuous carnage would have deluged the country in blood, until some daring chief, more fortunate than his adversary, would have riveted the chains of perpetual bondage!

"But now anticipating the approaching greatness of this country, nourished and protected under the auspices of a nation, forming and to be cemented by the strongest and the best of ties; the active, the generous, the brave, the oppressed defenders of their country will here find a safe, an honorable asylum, and may recline upon the pleasure of their own reflections."³⁹

It is customary to make some allowance for the patriotic fervor of the moment when quoting a speech of this nature. Such caution may well be discarded in this case when it is compared with the yet more impassioned outburst of the confidential letter of 1782.⁴⁰ The second paragraph suggests a reason for the non-fruition of monarchical projects, namely, that a solution was found which was much better suited to the republican and democratic tendencies of the people at large.

The dissolution of the confederation hinted at by Varnum had been, about 1782, a common subject of discussion, if we may trust the notes of a foreign observer. Even members of Congress often discussed them, and professed to feel little fear for disastrous results of such a course.⁴¹ Another view of the subject regarded the confederation as a convenient interstate treasurer, but little more.⁴² Meanwhile the financial distress of the army did not become less acute. A more distinguished officer than either Nicola or Varnum, and later first governor of the Northwest Territory, wrote thus in November, 1782:

³⁹Hildreth, *op. cit.*, 506.

⁴⁰Reference has already been made (above, n. 37) to the excitable temper of Varnum. While this might argue that he might exaggerate difficulties it equally argues that he, though little more alarmed than his friends, would be a better informant because less cautious in his expression of his thoughts.

⁴¹Translator's comment, *Travels by Marquis de Chastellux*, I, 218-219. The sojourn in Philadelphia during which the translator heard these discussions was probably early in 1782. See *Massachusetts Historical Society Proceedings*, XI, 6.

⁴²See, for example, R. H. Lee, *Letters* (J. C. Ballagh ed.), II, 282.

"I am in debt, and my credit exhausted, and, were it not for the rations I receive, my family would actually starve."⁴³

Washington himself, a few weeks earlier, had written to the Secretary of War, "I can not help fearing the result of the measure in contemplation, [the reduction of the army] . . . when I see such a number of men, goaded by a thousand stings of reflection on the past and of anticipation on the future, about to be turned into the world, soured by penury and what they call the ingratitude of the public. . . ." What the result was which Washington so feared is shown by the last sentence of the paragraph, "On the other hand, could the officers be placed in as good a situation as when they came into service, the contention, I am persuaded, would be, not who should continue in the field, but who should retire to private life."⁴⁴

The "Newburgh Addresses" and the "Order of the Cincinnati" are familiar terms to any one who has read the history of this period. Both had become factors in the American situation early in 1783. Their connection with "monarchical tendencies" is a matter of conjecture and interpretation, yet deserves some notice.

The "Addresses"⁴⁵ and the circumstances surrounding them lend themselves to our purposes as a commentary on the Nicola propositions. It will be recalled that the first of these papers was a petition to Congress, "agreed to by the principal officers" of the Newburgh cantonment. The petition contained nothing startling.⁴⁶ James Madison noted that General McDougall (member of the committee which presented the address to Congress) "made a remark w^{ch} may deserve the greater attention as he stepped from the tenor of his discourse to introduce it, and delivered it with peculiar emphasis. He said that the most intelligent & considerate part of the army were deeply affected at the debility and defects in the federal Gov^t, and the unwillingness of the States to cement & invigorate it; as in case of its dissolution, the benefits expected from the Revolution w^d be greatly impaired, and as in particular, the contests which might ensue am^d the States would be sure to embroil the officers . . ."⁴⁷ Thus it seems evident

⁴³Gen. St. Clair to Gen. Washington, Nov. 26, 1782, *St. Clair Papers* (W. H. Smith ed.), I, 572.

⁴⁴Oct. 2, 1782, Washington, *Writings* (Ford ed.), X, 92.

⁴⁵Conveniently treated in J. Sparks, *Writings of Washington*, VIII, appendix XII

⁴⁶*Ibid.*, 551-552.

⁴⁷*Madison's Notes on Debates in the Continental Congress*, Jan. 13, 1783.

that there was a general feeling among the officers that the existing government was very faulty and that there was little chance of its reform through civil action.

It will be recalled that the second "Newburgh Address" was unofficial and anonymous.⁴⁸ It is probable, however, that these very characteristics, since they meant a certain freedom from restraint, more truly expressed the existing discontent. Nicola had merely reported hearing that the army intended to refuse to disband till the pay they felt due them should be assured beyond doubt.⁴⁹ The author of the second "Newburgh Address" boldly urged such action by the army.⁵⁰ Another feature of this address reminds one of Nicola's plan, for there was a suggestion that, under certain circumstances, the officers, "courting the auspices, and inviting the direction" of their "illustrious leader" should "retire to some unsettled country." The author showed scorn for neither monarchy or republicanism as such but rather for the oppression that might be manifest under either. Thus he exhorted his fellow officers to oppose tyranny when it was garbed in the "plain coat of republicanism" quite as much as when it assumed the "splendid robe of royalty."⁵¹

It has been said that probably "Hamilton himself, and others generally patriotic, were not altogether sorry to see the army restless."⁵² Such an attitude could be easily accounted for by a desire for justice to public debtors and sure tranquility for the country⁵³ without connecting it with monarchical tendencies. A record of the confidential talks in which Hamilton probably took part, along with men of similar views, such as Gouverneur Morris for example, would throw much light on our problem. But no record of the sort appears. General Washington coped with the Newburgh affair quite as successfully as he had rebuked the monarchical propositions of Nicola. The meeting of officers which he addressed on the subject thanked him for what he had said, and

⁴⁸Evidence points to "John Armstrong, aide-de-camp to General Gates" as the writer, and to Gates, alone or with other "conspicuous men", as the instigator. McLaughlin, *The Confederation and the Constitution*, 65.

⁴⁹"Nicola Propositions," p. 2.

⁵⁰J. Sparks, *Writings of Washington*, VIII, 557.

⁵¹*Ibid.*, 557.

⁵²McLaughlin, *op. cit.*, 60.

⁵³Compare *ibid.*, 62-63.

"resolved unanimously, That the officers of the American army" rejected "with disdain, the infamous propositions"⁵⁴ of the anonymous address. They even made the following resolve:

"That the army continue to have an unshaken confidence in the justice of Congress and their country; and are fully convinced, that the representatives of America will not disband or disperse the army until their accounts are liquidated, the balances accurately ascertained, and adequate funds established for payment."⁵⁵

The military officers were not much longer without an organization which would continue to exist even after the disbanding of the army. In fact they looked forward to future generations and made their organization hereditary. It has a place in the present study despite the fact that the founders of the Society of the Cincinnati⁵⁶ had no "monarchical" intentions judging by their papers and private correspondence. Even Aedanus Burke, who combatted them with his anonymous pamphlet, which appeared soon after the society was founded,⁵⁷ admitted this, though he believed that they might have cherished such ideas in their hearts.⁵⁸ That is mere conjecture. But there are two points in connection with the Cincinnati which should be brought to mind in a study of monarchical tendencies, first, the popular hostility to the society, and second, its potentialities as a political machine. Neither of these had become very apparent in the first few months after the close of the war.⁵⁹ The further consideration of them will therefore be deferred to later chapters.

⁵⁴J. Sparks, *Writings of Washington*, VIII, 560-565.

⁵⁵*Ibid.*, 564.

⁵⁶Founded May 13, 1783, at General Steuben's headquarters near Fishkill, N. Y. Its purpose, as stated, was to continue comradely intercourse among the officers and provide for needy members. Provision was made for 13 state societies, to send delegates triennially to a general convention. Washington was its first president, succeeded after his death by Hamilton. It barely continued throughout the 19th century but is now in existence again with its full number of branches. *New International Encyclopaedia*, V, 335-336.

⁵⁷*Considerations on the Cincinnati*. Burke was a judge in South Carolina, and famous for his distaste of ceremony. See *American Historical Association Report*, 1896, I, 885-887. Although as a member of the convention in his state he opposed the adoption of the new federal constitution he served in Congress 1789-1791. *Appletons' Cyclopaedia of American Biography*, I, 454.

⁵⁸Burke, *op. cit.*, 3.

⁵⁹*Ibid.*, 3.

A few days after the organization of the Cincinnati Society a mutiny of some troops at the seat of the confederated government evidenced in a menacing fashion the resentment of the army over the matter of unfulfilled congressional promises.⁶⁰ Among the members of Congress forced to flee before the insulting demonstrations of the mutineers were probably men destined later to become so disgusted with the weakness of the existing government as to manifest decidedly monarchical inclinations.⁶¹

The remainder of the year was comparatively uneventful. The official news of the signing of the definitive treaty of peace at last arrived in October. Already, in anticipation of this news, the army had been reduced, and on November third all remaining members who had enlisted for the duration of the war, were discharged.⁶² General Washington, after some final arrangements, departed for his plantation and private life.⁶³ If the American people was thinking of monarchical rank for him it appeared to be only after he should die, when he might sit upon one of the

“ . . . thrones erected in the taste of heav’n,
Distinguish’d thrones for patriot demi-gods”.⁶⁴

⁶⁰A most interesting contemporary account of this is found in *Madison's Notes on the Debates in the Continental Congress*, June 19-21, 1783.

⁶¹For instance Nathaniel Gorham. See below, 69.

⁶²F. L. Humphreys, *Life of David Humphreys*, I, 279.

⁶³“Washington arrived at Mount Vernon on the day before Christmas.” Washington, *Writings* (Ford ed.), X, 340, n. 1.

⁶⁴From an ode “To His Excellency General WASHINGTON,” by “Hortensius” (Governor William Livingston), written for the *New-Jersey Gazette* in the spring of 1778, *New Jersey Archives*, 2d ser., II, 135-137.

CHAPTER IV

MONARCHICAL TENDENCIES FROM THE END OF THE WAR TO THE CONSTITUTIONAL CONVENTION: THE PRINCE HENRY EPISODE

By the time Congress had ratified the peace treaty (in January, 1784) the army had been quietly dispersed. But the fact that Congress "could barely assemble a quorum to ratify the treaty"¹ is illustrative of the more or less demoralized state of the government and suggests further trouble ahead. It is quite possible that there has been a tendency to paint the "Critical Period" in too somber colors. Many people of the time seem to have been fairly comfortable and contented under their state governments despite the defects of Congress.² The Articles of Confederation had been received with signs of "joy . . . in every Countenance but those of the Disaffected."³ As late as January 1786 a prominent New England business man praised the government of the Confederation for its "many excellent principles" and explained its apparent defects as "impediments in its administration" rather than in its structure.⁴

¹Jan. 14th. Van Tyne, *The American Revolution*, 330.

²See for example *The Letters of R. H. Lee*, II, 284, 343.

³Thomas Rodney, *Diary*, Feb. 26, 1781; Manuscripts Division, Library of Congress. Rodney was a member of Congress from Delaware at the time of the final adoption of the Articles of Confederation. By "the Disaffected" Rodney seems to have meant a minority out of sympathy with the general trend of affairs in the new nation.

⁴Nathan Dane in letter of Jan. 20th, *Dane Letters*. Manuscripts Division, Library of Congress. His sincerity in moving for a constitutional convention was questioned by Madison in his *Notes on Debates in the Continental Congress*, Feb. 21, 1787. Manuscripts Division, Library of Congress. On Dane's public services see *Massachusetts Historical Society Proceedings*, II, 7-9. In a letter of Jan. 31, 1786, Dane said it was yet "too early to take desperate measures" but if "3 or 4 weak or obstinate States" would not contribute properly to the general funds they "must be shaken off and left to their misfortunes." *Dane Letters*, Jan. 31st. Compare J. B. McMaster, *History of the People of the United States*, I, 201-202.

On the other hand it will be recalled that the Congress of the Confederation had so little power that it could not even provide for the debts which had been part of the price of independence. The president of Congress in 1787 was almost in despair over the disgraceful difficulty of securing a quorum, while his predecessor has been suspected of seeking truly desperate remedies.⁵ In general Congress failed to command respect either at home or abroad.⁶ It was the unrest in New England particularly, culminating in the "Shays Rebellion," which is generally accepted as having convinced men, all over the United States, of the absolute necessity of a reform of the government of the Confederation. But comparatively little attention has been paid to the possibility that the more stringent remedies which some of the Massachusetts conservatives considered pointed towards monarchical institutions.

The historian Minot, clerk of the Massachusetts House of Representatives at the time of the insurrection, wrote that "There began . . . to arise [a] class of men in the community, who gave very serious apprehensions to the advocates for a republican form of government. These, though few in number, and but the seeds of a party, consisted of persons respectable for their literature and their wealth. They had seen so much confusion arising from popular councils, and had been so long expecting measures for vindicating the dignity of government, which seemed now less likely to take place than ever, that they, with an impatience too inconsiderately indulged, were almost ready to assent to a revolution, in hopes of erecting a political system, more braced than the present, and better calculated, in their opinions, to promote the peace and happiness of the citizens."⁷ In the Massachusetts convention for the ratification of the federal constitution a Mr. Smith, who described himself as "a plain man" and farmer and no office seeker, declared that the insurrection of the preceding year had brought so much anarchy and distress that "we should have been glad to snatch at anything that looked like a govern-

⁵Arthur St. Clair to Governor Huntington of Connecticut [June or Aug.?] 1787; *St. Clair Papers*, I, 603-604. (The letter does not specify the month or day.)

⁶See such standard treatments as that by Fiske, *The Critical Period of American History*; McLaughlin, *The Confederation and Constitution*; McMaster, *op. cit.*, chaps. II-IV; Channing, *History of the United States*, III, chap. xv.

⁷G. R. Minot, *History of the Insurrections in Massachusetts* (1st ed., Boston, 1788, 2d ed., Boston, 1810), 61-62. For brief notice of Minot see *New International Encyclopaedia*, XV, 757.

ment. Had any person, that was able to protect us, come and set up his standard, we should all have flocked to it, even if it had been a monarch."⁸ This statement, isolated though it be, at least suggests the possibility that the harassed people might have supported the projects of the little group of anti-republican leaders to whom Minot referred.

Jefferson, despite his own vigorous denunciations of monarchy as a remedy far worse than any disease that might afflict republican government,⁹ could believe that some Americans were capable of considering monarchy for their country. "We were educated in royalism; no wonder if some of us retain that idolatry still."¹⁰ Already, in 1784, a prominent New England clergyman had said, "Experiment is the surest and fairest way of coming at knowledge; and I think it will not be much longer before we shall all be convinced that a democratic government, over such a large and increasing number of people, inhabiting so vast an extent of country, is to say the least . . . extremely inconvenient . . . and very inadequate to the purpose." Again he wrote, "Let it stand as a principle that government originates from the people; but let the people be taught (. . . they will learn it by experience, if no other way) that they are not able to govern themselvesShould even a limited monarchy be erected, our liberties may be as safe as if every man had the keeping of them solely in his own power."¹¹

William Plumer, in 1784, on the eve of his career as a prominent New England statesman, had no aversion to monarchy. Moreover he professed to believe his attitude to be a not unrepresentative one! His political creed was as follows:

⁸J. Elliot, *Debates in the . . . State Conventions*, II, 102-103.

⁹" . . . with all the defects of our constitutions, whether general or particular, the comparison of our governments with those of Europe, are like a comparison of heaven & hell. England, like the earth, may be allowed to take the intermediate station." Jefferson to J. Jones, Aug. 14, 1787, *Writings* (Ford ed.), IV, 438. Compare his letter to B. Hawkins, Aug. 4, 1787, *ibid.*, IV, 426.

¹⁰To James Madison, Mar. 15, 1789, Jefferson, *ibid.*, V, 83. Note that in the same letter he is confident that the "young people . . . educated in republican-ism" will never consider monarchy. Compare *ibid.*, IV, 261.

¹¹Jeremy Belknap to Ebenezer Hazard, Feb. 27 and March 3, 1784, *Belknap Papers*, I (*Massachusetts Historical Society Collections*, 5th ser., II), 307 and 315 respectively. Belknap was prominent and respected in both Massachusetts and New Hampshire. See *New International Encyclopedia*, III, 96.

" . . . I am fully resolved to use my power & influence in supporting that form of Government which my country establishes. I do not feel hostile to either democracy, autocracy, or monarchy. I am inclined to think the people are much more interested in the good administration than in the theory or form of the government—Or, as Pope expresses it, 'That government is best which is administered best.'"¹²

John Jay, in 1786, after referring to the Shays Rebellion, wrote, "Much, I think is to be feared from the sentiments which such a state of things is calculated to infuse into the minds of the rational and well-intended. In their eyes, the charms of liberty will daily fade; and in seeking for peace and security, they will too naturally turn towards systems in direct opposition to those which oppress and disquiet them.

"If faction should long bear down law and government, tyranny may raise its head, or the more sober part of the people may even think of a king."¹³

Four months earlier Jay had written a similar letter to Washington¹⁴ in which, without using the term "king" or "monarchy" he had confessed his fear that a "state of fluctuation and uncertainty must disgust and alarm" the "better kind of people"¹⁵ until it should "prepare their minds for almost any change that may promise them quiet and security." Washington, in his answer, went much further and said he had been told "that even respectable characters speak of a monarchical form of government without horror." He added that "[f]rom thinking proceeds speaking; thence to acting is often but a single step," and expressed horror at "consequences we have but too much reason to appre-

¹²A collection of Letters written to and by William Plumer and transcribed for his *Amusement and Instruction*, 58-59. Manuscripts Division, Library of Congress. See W. Plumer Jr., *Life of William Plumer*, 53-59. In a letter written the same year Plumer declared that "if our elective government" was to be "long supported" it would be due only to the judiciary, since this was "the only body of men" who had "an effective check upon a numerous Assembly." Plumer, *Letters*, 69. See *Life of Plumer*, 67-80.

¹³Jay to Jefferson, Oct. 27, 1786, Jay, *Correspondence*, III, 213.

¹⁴Written at Philadelphia, June 27, 1786. *Ibid.*, III, 203-205.

¹⁵Jay defined the "better kind of people" as those who were "orderly and industrious . . . content with their situations and not uneasy in their circumstances." *Ibid.*, 205.

hend."¹⁶ Again, in December 1786, Washington was writing about the Massachusetts situation. This time it was in a letter to General Knox in which he noted that the latter had intimated "that the men of reflection, principle, and property in New England, feeling the inefficacy of their present government" were "contemplating a change" but that he had not been "explicit with respect to its nature."¹⁷ Only a few weeks before the Constitutional Convention Washington expressed the following views in a letter to Madison: "I am fully of opinion that those, who lean to a monarchical government, have either not consulted the public mind, or that they live in a region, which (the levelling principles in which they were bred being entirely eradicated) is much more productive of monarchical ideas, than are to be found in the southern States. . . . I am also clear, that, even admitting the utility, nay, necessity of the form, yet that the period is not arrived for adopting the change without shaking the peace of this country to its foundation." This affords not only additional evidence that Washington recognized the existence of "monarchical" tendencies but suggests that he was not wholly horrified at their existence.¹⁸

Judging from the dearth of contemporary references to the "monarchical plot" of 1786 no one who knew the facts cared—or perhaps, dared—to be explicit about them, while the secret was too well guarded to be handed about among its enemies. It has been well and wisely said that "Imperfection or absence of record excuses many a lame and ill-constructed story and covers with a decent pall the failings of many a reputation."¹⁹ Perhaps the story that a Prussian prince was offered an American crown falls under this indictment. But in view of the apprehensions of such men as Washington and Jay that something of the sort might be afoot the story should be examined, both by itself and in the light of attendant circumstances.

A newspaper article which appeared March 2, 1799, posed as having the facts well in hand. This article purported to be by a Federalist and, according to the editorial note, was printed in the

¹⁶Mount Vernon, Aug. 1, 1786, Washington, *Writings* (Ford ed.), XI, 55.

¹⁷Dec. 26, 1786, *ibid.*, XI, 105.

¹⁸Letter dated March 31, 1787, *ibid.*, XI, 132.

¹⁹W. C. Ford, Manuscripts and Historical Archives, *American Historical Association Report*, 1913, I, 79.

opposition press because it displayed "the sentiments and designs as well as the practices of the party that has been running these States to destruction . . ."²⁰ The letter impresses one as a clever parody of Federalist views. Whether a parody or not it is interesting and suggestive. The writer, after suggesting a royal dynasty for America, continued, "I have no idea however, of looking for one of a foreign growth. The invitation given to a Prince of the illustrious house of Brandenburgh, about the time of the Shays insurrection, never met my approbation: Henry's answer displayed great political sagacity, and ought never to be forgotten: I believe it still in existence." This disclosure was apparently not followed up. A monarchical charge in the same paper, more than a year later, contained no reference to the foreign prince, though it concerned "the period between the peace of 1783, and the formation of the constitution of 1787." It was aimed at Alexander Hamilton, as was also a similar rumor of about the same time which Hamilton flatly denied.²¹

Some fifteen years later President-elect Monroe confided to General Andrew Jackson his observations on monarchical tendencies in the period in question.²² "That some of the leaders of the federal party entertained principles unfriendly to our system of government I have been thoroughly convinced; and that they meant to work a change in it, by taking advantage of favorable circumstances, I am equally satisfied." He then referred to his membership for three years in the Congress of the Confederation "just before . . . the adoption of the present Constitution," and later in the Senate, "beginning shortly after its adoption."

²⁰The (Philadelphia) *Aurora* (reprinting from the *Albany Register*), Mar. 2, 1799, p. 2.

²¹*Ibid.*, Aug. 30, 1800, p. 2. For Hamilton's action concerning such charges see his letters to Governor George Clinton, Feb. 27, Mar. 2, Mar. 7, and Mar. 9, 1804, in Hamilton, *Works*, VIII, 610-613. James Kane records that he accompanied Hamilton in a call upon Mr. Purdy, who had repeated these charges, and Purdy said that what he had really said was in respect to a claim that "sometime previous to the convention which framed the present Constitution of the United States . . . somebody in England had made proposals to somebody at the Eastward for establishing a monarchy in this country, and placing at the head . . . a son of the King of Great Britain; that some letters or papers containing these proposals were sent to Gen. Hamilton, copies of which were made in his office to be distributed." *Ibid.*, VIII, 611, n. This version of Purdy's charges differs materially from that given by Mr. Kane.

²²Dec. 14, 1816, Monroe, *Writings*, V, 342-345.

During this service, said he, "I saw indications of the kind suggested. It was an epoch at which the views of men were most likely to unfold themselves, as, if anything favorable to a higher toned government was to be obtained, that was the time. . . . No daring attempt was ever made, because there was no opportunity for it." After making further comments apparently referring to the period following 1789, he concluded, "Many of the circumstances on which my opinion is founded took place in debate, and in society, and therefore find no place in any public document. I am satisfied however that sufficient proof exists, founded on facts, and opinions of distinguished individuals, which became public, to justify that which I had formed." He added that it was his "candid opinion . . . that the dangerous purposes . . . were never adopted, if they were known, especially in their full extent, by any large portion of the federal party; but were confined to certain leaders and they principally to the eastward." Even so he felt he ought to hesitate before admitting recruits from the Federalist party into his own administration. The practical politics of 1816 were interwoven by the writer with the monarchical charges which he made. Yet the existence of a political motive in circulating such charges does not prove that they were not founded on facts.

A more definite statement was made by President Monroe in 1817, according to the "Memoirs" of Joseph Gardner Swift.²³ The occasion was a confidential conversation which occurred sometime during a trip on which Swift accompanied the President. Swift records that "Mr. Monroe said that during the presidency of Congress of N. Gorham, that gentleman wrote Prince Henry, of Prussia, his fears that America could not sustain her independence, and asked the prince if he could be induced to accept regal power on the failure of our free institutions. The prince replied that he regretted deeply the probability of failure, and that he would do no act to promote such failure, and was too old to commence new labors in life."²⁴

²³J. G. Swift, 1783-1865, was one of the first two graduates of West Point. He was superintendent of the same from 1812-1817. His *Memoirs* were published in 1890. For brief notice see *Lamb's Biographical Dictionary*, VII, 269-270.

²⁴J. G. Swift, *Memoirs*, 164. Dr. Samuel Eliot Morison called the writer's attention to this passage.

In 1824 a diary entry by Rufus King bore witness that Monroe was still referring to the existence of monarchical tendencies.²⁵

"10th May 1824. Col. Miller this evening said to me, speaking of Mr. Pr. Monroe that he had told him that Mr. Gorham, formerly President of Congress, had written a letter to Prince Henry, brother of the great Frederic, desiring him to come to the United States to *be their King*, and that the Prince had declined by informing Mr. Gorham that the Americans had shown so much determination agt. their old King, that they woud. not readily submit to a new one; Mr. Monroe adding that Genl. Armstrong had given him this information and that the papers or correspondence was in the hands of *General Hull*.²⁶

"This communication arose from the letter of Monroe to General Jackson, expressing his opinion that among the Federalists of the time of Genl. Washington, were persons in favor of Monarchy, ! ! ! "

No communication of this nature appears among the Monroe papers, yet it is not improbable that it was transmitted orally. The question naturally arises as to how Armstrong knew that Hull had such papers, supposing they really were in his possession. He may have become aware of them during the court-martial of Hull in 1813-1814²⁷ since he was Secretary of War at the time.²⁸ On the other hand the papers may have been destroyed by fire, in 1812, along with many others belonging to Hull.²⁹ But Arm-

²⁵R. King, *Life and Correspondence*, VI, 643-644. It may be relevant to remark that this again was the year of a presidential election.

²⁶Hull's oration before the Massachusetts Cincinnati July 4, 1788 contains references quite in keeping with a knowledge of such a plan as the one ascribed to Gorham. See below, page 73.

²⁷F. S. Drake, *Memorials of the Cincinnati of Massachusetts*, 352.

²⁸*New International Encyclopaedia*, II, 157.

²⁹For remarks on the loss of these papers see Drake, *op. cit.*, 353, and Marie Campbell, *Life of Hull*, ix-x. The latter was one of General Hull's daughters. She makes no reference to monarchical ideas in American unless a passage on page 218 refers to them. In connection with Hull's possible interest in the affair, it may be noted that he returned to Massachusetts about 1786 and took part against the Shays Rebellion. Drake, *op. cit.*, 346. He had served in the Revolution under Steuben. Campbell, *op. cit.*, 127. Incidentally it may be borne in mind that the charges against Hull dealt with treachery as well as cowardice although he was not convicted of the former.

strong had an opportunity for more direct information for he spent the winter of 1787-88 in the same lodging-house as General Steuben,³⁰ the man who is supposed to have transmitted the invitation to the prince.³¹ He was, moreover, esteemed and trusted as a friend by Steuben.³² If, as seems probable, Armstrong wrote the second "Newburgh Address,"³³ he was keenly interested in methods of curbing republican "tyranny."

Already, in 1822, two years before his diary entry on the subject, King had become involved in a sharp argument in the Senate regarding "a proposal of inviting some German prince" to an "intended American throne."³⁴ In 1825 there seems to have been an attempt to exploit the incident, probably as propaganda against King, who was being considered for the appointment to the Court of St. James.³⁵ Senator Barbour of Virginia, who had been King's opponent in the Senate argument on the matter, was called to account by King's son, Charles, and asserted that what he had said on that occasion "was stated as a mere rumor" and without pointing "to any particular individual, for none by name had been mentioned to him, so far as he then recollected." According to Barbour, King had entered the fray of his own accord, becoming much excited and denouncing the rumor "as most idle and unfounded." After some attention to the matter in high quarters, including a cabinet meeting, President John Quincy Adams concluded that "henceforth Prince Henry of Prussia" would be "suffered to sleep in Peace."³⁶ But the royal ghost has once more been aroused by a recent documentary discovery.

Until this discovery General Steuben's reputed participation in the episode rested upon an anecdote related by Mr. Mulligan,

³⁰F. Kapp, *Life of Steuben*, 543.

³¹Below, pp. 63-64.

³²Kapp, *op. cit.*, 585.

³³See McLaughlin, *The Confederation and the Constitution*, 63-65. See also above, page 51.

³⁴In the debate on the revolutionary pension act of Feb. 4, 1822. See Barbour's account of it in King, *Correspondence*, VI, 645-646.

³⁵See King *Correspondence*, VI, 582, 644-647, for letter, etc., on the affair. See also J. Q. Adams, *Memoirs*, VII, 55, 56, 63-64; VI, 481.

³⁶There appears to be no real reason for connecting King with the episode. Instead he seemed to have feared that some of the Massachusetts delegates to the Federal Convention would be men who would propose some such desperate remedies. See King, *Correspondence*, I, 201.

his secretary, many years after Steuben's death. Steuben's biographer, Friedrich Kapp, who heard the tale from Mulligan, considered the latter a trustworthy source despite the lapse of years since his association with the General.³⁷ Kapp relates that when "before the adoption of the present Constitution, in a circle of his [Steuben's] friends, the question of the form of government was discussed, and it was not yet decided whether the President was to be vested only with the authority of the highest civil officer, or with the more princely privileges of the Dutch Stadtholder, one of the party, addressing himself to Steuben, asked whether Prince Henry, of Prussia, would be willing to accept an invitation, and whether he would make a good President? Steuben answered, 'As far as I know the prince he would never think of crossing the ocean to be your master. I wrote to him a good while ago what kind of fellows you are; he would not have the patience to stay three days among you'."³⁸ Steuben was on intimate terms with such men as Duer, Jay, Hamilton and others of their standing, some of whom may have been in the group at the time.³⁹

There is every reason to presume that Steuben took part in the affair. In the first place Prince Henry had been both friend and commander to Steuben in the days before the latter had transferred his military activities to America.⁴⁰ Even if he believed that Henry would refuse the invitation he might well have been pleased to transmit such a compliment to the Prince. In the second place Steuben, despite his very valuable services in the Revolution, had been treated by Congress with ingratitude and even injustice.⁴¹ In the third place, Steuben took a keen interest in both the theory and practise of government.⁴² Finally, his success in reorganizing the American army at a critical period during the War⁴³ may have led him to believe he could be equally helpful in reorganizing the government of his adopted country in the critical period succeeding the War.

³⁷Kapp, *Life of Steuben*, xii, 584.

³⁸*Ibid.*, 584.

³⁹*Ibid.*, 580-581.

⁴⁰*Ibid.*, 60-61.

⁴¹*Ibid.*, ch. xxv.

⁴²*Ibid.*, 584. He wrote several articles on the prerogatives and duties of the chief executive officer under the republican form of government and was one of the active Federalists in New York politics.

⁴³*Ibid.*, 526.

Several years ago there was discovered, in the Royal Prussian Archives at Charlottenburg, a copy of a letter written by Prince Henry to General Steuben in April, 1787. This find appears to have shed new light on the alleged invitation to the Prussian prince. Richard Krauel has given it to us as follows:⁴⁴

"Monsieur de Stuben, général au service des États-Unis de l'Amérique. En Amérique au Hanôvre à 5 milles de New-York.
Monsieur

Votre lettre du 2 du mois 9^{bre} m'est parvenue. Je l'ai reçue avec tout le sentiment de la reconnaissance mêlée de surprise. Vos bonnes intentions sont bien dignes de mon estime, elles me paraissent l'effet d'un zèle que je voudrais reconnaître, tandis que ma surprise est une suite des nouvelles que j'apprends par la lettre d'un de vos amis. J'avoue que je ne saurais croire qu'on pût se résoudre à changer les principes du gouvernement qu'on a établi dans les États-Unis de l'Amérique, mais si la nation entière se trouverait d'accord pour en établir d'autres, et choisirait pour son modèle la constitution d'Angleterre, d'après mon jugement je dois avouer que c'est de toutes les constitutions celle qui me paraît la plus parfaite. On a l'avantage que si, comme dans tous les établissements humains, il se trouve quelque chose de défectueux, qu'on pourrait le corriger et faire de si bonnes lois pour que la balance fût mieux établie entre le souverain et les sujets, sans que ni l'un ni les autres ne pussent jamais empiéter sur les droits alloués respectivement à chacun. Il ne m'est pas possible de vous envoyer un chiffre, vous comprenez qu'il courrait les hasards des lettres et se trouverait entre les mains de ceux qui s'en saisiraient les premiers. Je vais cet automne en France, peut-être y trouverais-je un de vos amis. Les Français sont jusqu'à cette heure les vrais alliés des États-Unis de l'Amérique. Il me paraît que rien de grand pourra solidement se faire chez vous, à moins d'y faire concourir cet allié. Cela suffit, Monsieur, pour vous faire comprendre que c'est par ce canal que je pouvais recevoir à l'avenir les lettres que vous voudrez m'adresser.

En vous assurant que je désire ardemment de vous donner des preuves de l'estime avec laquelle je suis, Monsieur, votre très affecté ami."

⁴⁴In an article, "Prince Henry of Prussia and the Regency of the United States, 1786," *American Historical Review*, XVII, 47-48. For the assignment of date to the letter see *ibid.*, 48.

Krael admits that the letter does not, at first sight, appear to be an answer to monarchical propositions. But he points out that the phraseology was intentionally general and indefinite to avoid detection by outsiders who might get possession of the letter. He notes that the answer shows that the missive from Steuben inclosed a paper from an American friend of Steuben's of a nature to astonish the Prince. He asserts that the enclosure obviously "related to a proposed fundamental change in the constitution of the United States." The praise bestowed by Henry upon the English constitution, according to Krael's suggestion, indicates that the Prince had monarchy in mind as a model. Krael lays much stress on the fact that a Prussian prince was being consulted in regard to the internal politics of the United States, and that the consultation was to be so confidential as to involve a request that the Prince send a cipher for its continuance. Krael asserts that the inference is almost sure that Henry, in his letter, was actually referring to a monarchical project but suggesting a French prince for the rôle.⁴⁵ Krael admits that "strict proof in the legal sense" is lacking but concludes, "That the American writer of the letter which so astonished the prince was Nathaniel Gorham and that Gorham acted in a common understanding with his political party associates can scarcely be doubted longer."⁴⁶

The missing letter has not yet been found and perhaps never will be.⁴⁷ Unless it appears and is seen to be of the character ascribed to it by such an account as the one set forth above the episode to which it relates is no sure proof of the existence of monarchical tendencies in the United States, although it may serve as a tentative guide pointing towards some such conclusion. In the absence of the letter some insight may be gained by a study of the life and character of the American who is said to have written the

⁴⁵ Krael, *op. cit.*, 48-49.

⁴⁶*Ibid.*, 51. Channing believes that Krael has succeeded in demonstrating "the strong probability" that a "suggestion was made in 1786 by some one looking toward the offering of the regency of the new United States to Prince Henry of Prussia . . ." *History of the United States*, III, 475. Farrand says that Krael "presents interesting evidence" on the subject. *Framing of the Constitution*, 174.

⁴⁷The present writer has communicated with such authorities as Worthington C. Ford, Archer B. Hulbert, J. Franklin Jameson, and Samuel E. Morison, only to be told by each that he knows of the existence of no "Gorham Papers" that would bear upon this subject. Appeals to members of the Gorham family have brought similar replies.

invitation to the Prince. Nathaniel Gorham was a leading figure among those citizens referred to as the "better kind of people," the "orderly and industrious," the "respectable," "rational," and "well-intentioned" who were suspected, in 1786, of leaning towards monarchy as a remedy for "vindicating" the much abused "dignity of government." An account of his life and public services⁴⁸ impresses one with his zeal for "good government" and his high standing among his constituents. He was born in Charlestown, Massachusetts, in 1738, and received his education in that town. His interest in history and in the biographies of great men, first evidenced in his school days, was maintained throughout his entire life.⁴⁹ About the close of the French and Indian War he entered business as a merchant in his home town.⁵⁰ He soon became a representative to the colonial legislature of Massachusetts and after that a member of the provincial congress and of the board of war. He served in the state constitutional convention of 1779.⁵¹ About this time he acted as one of three commissioners who were influential in suppressing an incipient insurrection in western Massachusetts.⁵² He was an active member of the Continental Congress in the years 1782 and 1783.⁵³ Some obscurity surrounds his movements for the next year. He was not in Congress and he may have been in Europe. Dr. Welsh, in an oration a few days after Gorham's death, refers to Gorham as having been requested by the sufferers from the Charlestown fire "to undertake a voyage to Europe" to solicit aid for the rebuilding of the town. Dr. Welsh does not state quite clearly that the trip

⁴⁸For brief notices see Farrand, *Records of the Federal Convention*, III, 87-88; *Biographical Congressional Directory*, 679; Lamb, *Biographical Dictionary*, III, 336; R. Hildreth, *History of the United States*, III, 460; *American Historical Association Report*, 1896, I, 704; *Massachusetts Historical Society Collections*, 7th ser., III, 85-86, *Massachusetts Historical Society Proceedings*, 1st ser., XIX, 406, n. For longer accounts see Dr. Thacher, *Sermon on the Death of N. Gorham*, and Dr. Welsh, *Eulogy to the Memory of N. Gorham*.

⁴⁹Welsh, *op. cit.*, 5-6.

⁵⁰*Ibid.*, 5-6.

⁵¹Lamb, *Biographical Dictionary*, III, 336. See *Massachusetts Historical Society Collections*, ser. 7, III, 85-86 for the appointment of Gorham as a member of a Massachusetts commission to meet commissions from other states to consider problems connected with the war, July, 1780.

⁵²Welsh, *op. cit.*, 10-11.

⁵³*Journals of the Continental Congress*, XXIII, 811, 821, etc.; Madison, *Notes*, Jan. 15, Jan. 27, Feb. 11, etc., 1783.

was actually made.⁵⁴ At any rate he again entered Congress in 1785 and June 6, 1786, was elected successor to John Hancock as president of that body, a position he filled until February 2, 1787.⁵⁵ He was one of the Massachusetts delegates to the Federal Convention which framed our present constitution. He shared with Washington the honor of presiding at its meetings, acting as chairman of the committee of the whole.⁵⁶ He was an active supporter of the proposed constitution in the Massachusetts ratifying convention.⁵⁷ About this time he became associated with the "Phelps and Gorham's Purchase" of lands in western New York⁵⁸, the project for which he is probably best remembered today. In 1791 he was made "supervisor of the excise in the Massachusetts district."⁵⁹ His chief public services in these last years appear to have been in the capacity of judge of the Court of Common Pleas, a position he resigned only a few days before his death in 1796.⁶⁰

As to his character and reputation the few references that we find regarding them are entirely favorable. Dr. Thacher said that there were few men who had "filled so many and important offices . . . and . . . to such general acceptance" and referred to his "wisdom and integrity" as being well-known. Dr. Welsh enlarged upon the same topics when he declared that "Few men were more perfect in the art of rendering themselves agreeable to public bodies. His knowledge of men unfolded to him all the avenues to the heart." Praise was bestowed upon the clear mind and the prudent and conciliatory temper which Gorham possessed.⁶¹ Madison's notes on debates in the Continental Congress pictured Gorham as somewhat more assertive and less conciliatory than does the above account. One of his colleagues in the Constitutional Convention of 1787 described him in the following terms:

⁵⁴Welsh, *op. cit.*, 11.

⁵⁵Lamb, *Biographical Dictionary*, III, 336; Hildreth, *History of the United States*, III, 460.

⁵⁶Farrand, *Records of the Federal Convention I*, 29-312, *passim*.

⁵⁷Below, page 70.

⁵⁸*Massachusetts Historical Society Proceedings*, XIX, 406, n.

⁵⁹*American Historical Association Report, 1896*, I, 783, n.

⁶⁰Welsh, *op. cit.*, 11.

⁶¹Thacher, *op. cit.*, 21-22; Welsh, *op. cit.*, 12. Compare Farrand, *op. cit.*, III, 87.

"Mr. Gorham is a Merchant in Boston, high in reputation, and much in the esteem of his Country-men. He is a Man of very good sense, but not much improved in his education. He is eloquent and easy in public debate, but has nothing fashionable or elegant in his style;—all he aims at is to convince, and where he fails it never is from his auditory not understanding him, for no Man is more perspicuous and full. He has been President of Congress, and three years a Member of that Body. Mr. Gorham is about 46 years of age, rather lusty, and has an agreeable and pleasing manner."⁶²

A remarkable feature of the man is that he seems seldom to have committed his thoughts to writing. Not only does it seem impossible to locate any collections of "Gorham Papers" but other collections of the period contain very few letters from Gorham. Even his letter book of correspondence as president of Congress is not to be found. Perhaps the prudence cited by his eulogist led Gorham to put little into writing and to preserve still less of what was written. Perhaps his preoccupation with action made him a poor correspondent and chronicler. Whatever the explanation, the fact remains a serious obstacle to a complete understanding of the man.

Some idea of Gorham's political views can be gained from the many references to his part in congressional debates in 1783. Judging by these records he subordinated theory to practicability,⁶³ and believed in making a fair trial of one expedient before abandoning it for another.⁶⁴ He supported vigorous action by Congress,⁶⁵ but with the interests of his own state and section especially at heart. He went so far as to hint that the formation of a New England confederacy might become advisable.⁶⁶ In his service in Congress in 1782 and 1783 he had much provocation to

⁶²William Pierce, of Georgia, whose character sketches of various members of the Convention are of considerable interest and value. See Farrand, *op. cit.*, III, 87.

⁶³Madison, *Notes*, for Jan. 15 [14], and Feb. 12, 1783.

⁶⁴*Ibid.*, Jan. 15 [14].

⁶⁵*Ibid.*, Jan. 27, Feb. 11.

⁶⁶*Ibid.*, Feb. 21.

be discouraged and disgusted with the inefficiency of the existing government.⁶⁷

Gorham's position as presiding officer during most of his last term in the Congress of the Confederation has deprived us of the remarks he might otherwise have made in debates in the eventful year of 1786, the year in which his letter to Prince Henry is supposed to have been written. A few bits of data, however, are available. For instance we find that he was a member of a committee appointed March 19, 1786, to attempt to persuade New Jersey to rescind a negative on a requisition proposal, New Jersey's action having caused "great uneasiness" in Congress.⁶⁸ The matter was still troubling him after his election as President of Congress, judging from a letter addressed to him by Governor Bowdoin of Massachusetts, who wrote, "I am of opinion with you that unless the States are more attentive to the requisitions of Congress . . . the federal government must cease and the union with it." Bowdoin suggested that "such a catastrophe" might be prevented by an urgent application to Governor Clinton in regard to New York's action on the impost act.⁶⁹

The next year, as before noted, Gorham was a prominent member of the Federal Convention. The records show no attempt on his part to promote such a plan as the one concerning Prince Henry. He was always found, however, on the side of those who favored comparatively "high toned" measures.⁷⁰ One remark he made may be of marked significance, namely, that "It is not to be supposed that the Govt will last long enough" to make the numbers of representatives excessive, for "Can it be supposed that this vast Country including the Western territory will 150 years hence remain one nation?"⁷¹

Soon after the close of the Federal Convention Gorham was applying his energies towards the ratification of the new constitu-

⁶⁷Madison, *Notes*, Jan. 24, Feb. 18, Feb. 20. Note especially the insulting conduct of the mutineers towards members of Congress, June 13-June 21. Gorham was doubtless one of the fleeing Congressmen who adjourned to meet at Princeton. On conditions in Congress, 1786-1787, see King, *Correspondence*, VI, 199.

⁶⁸Monroe, *Writings*, I, 124.

⁶⁹Letter of June 24, 1786. *Bowdoin and Temple Papers*, II (*Massachusetts Historical Society Collections*, 7th ser., VI) 104.

⁷⁰See Farrand, *op. cit.*, III, 660-661, for index references to Gorham's part in the Convention.

⁷¹Aug. 8, 1787, Farrand, *op. cit.*, II, 221.

tion by the Massachusetts state convention. He sought and secured from Franklin permission to publish the latter's closing speech made in the Federal Convention, declaring it a speech "calculated to prevent war and blood-shed."⁷² In the Massachusetts convention he "vindicated the delegates to Philadelphia against the charge of exceeding their commission"⁷³ and "explained the nature of the President's office; the advantage of the responsibility of *one man*, &c."⁷⁴ Gorham expressed great joy at hearing of the ratification of the Constitution by Virginia. In a letter on the subject to Washington he wrote thus:

"Although I am passing rapidly into the vale of years, and shall live to see but a small portion of the happy effects which I am confident this system will produce for my country, yet the precious idea of its prosperity will not only be a consolation amid the increasing infirmities of nature and the growing love of retirement, but it will tend to soothe the mind in the inevitable hour of separation from terrestrial objects."⁷⁵

There is a variety of evidence which supports the hypothesis that monarchical tendencies were developing in Massachusetts and perhaps other parts of the North towards the end of the Confederation period. In the summer of 1787 St. John de Crèvecoeur, French Consul at New York, was visiting friends in Boston.⁷⁶ Crèvecoeur had spent much of his life in America⁷⁷ and was much interested in strengthening the connections between France and the United States.⁷⁸ But July 22, 1787, he wrote,⁷⁹ "I wou'd not advise an European who is possessed of

⁷²Thus he secured permission from Franklin to publish his closing speech in the Convention, and apparently found it effective propaganda. See Hays, *Calendar of Franklin Papers*, IV, 357, 361, and *Franklin Papers, Miscellaneous*, VIII, 1840.

⁷³Jeremy Belknap's notes on the Massachusetts ratifying Convention, *Massachusetts Historical Society Proceedings*, III, 302.

⁷⁴*Ibid.*, 301.

⁷⁵July 21, 1788, G. Bancroft, *History of the Constitution of the United States*, II, 475.

⁷⁶According to Julia P. Mitchell, *St. Jean De Crèvecoeur*, 266. Crèvecoeur spent "most of July, all of August, perhaps part of the autumn as well" in Boston.

⁷⁷*Ibid.*, 11-13.

⁷⁸He had been active in establishing a packet service between the two countries. *Ibid.*, 3.

⁷⁹In a letter to William Short in Paris. The letter quoted is in the possession of the Historical Society of Pennsylvania. The present writer is indebted to Dr. John W. Jordan, Librarian, for permission to have a copy made for use in this study.

some property to visit this Country just now. . . ." The reason he advanced was that "it [is] made Extremely Precarious by the weakness of Gov^t and the horrid abuse the people have made of their Legislatif Power." After exclaiming over the "astonishing change" that had taken place "in the Laws & Gov^t of y^e Americans" he added, "Some time I cant help wishing the Independants had been postponed to a more distant period—if the Federal Convention is able to accomplish nothing all will be Lost for the Seeds of broils & Contentions are ready to burst in many Places." A possible and even probable source for some of his ideas is revealed in a matter of fact postscript, "I saw yesterday Col. Humphreys⁸⁰ at Gov^t Bodouin."⁸¹ Knowing the aristocratic tendencies of these two men, and knowing that both had been following the Massachusetts uprising with keen interest and much foreboding⁸² it is wholly reasonable to conclude that they felt as pessimistic as did Crèvecoeur. His half wish for a return of monarchy may well have been an echo of wishes he heard expressed in Governor Bowdoin's presence.

As late as April 1, 1788, the same writer made some yet more startling statements.⁸³ One can read them today in the original, though only with great difficulty, since the letter in which they occur is written in an almost illegible hand.⁸⁴ The passage of greatest interest, when translated into English, reads as follows:

"Would You believe, that in the 4 Provinces of New England they Are So weary ["las"] of the Govt. . . . that they Sigh for Monarchy & that a very large number of persons in several Counties would like to return to English domination (?)—Lord Dorchester Gov^t of Canada has Spies on All Sides, This City

⁸⁰For Humphreys' aristocratic manner see F. Humphreys, *Life of David Humphreys*, III, 387, 429.

⁸¹On Bowdoin see *Massachusetts Historical Society Proceedings*, 2d ser., XI, 291; *Proceedings of American Antiquarian Society*, n. s., XV, 223.

⁸²Above, p. 69, and Humphreys, *op. cit.*, I, 373-374, 378. Two letters from Crèvecoeur to the Duke of Harcourt written at about the same period describe the political situation with much more reserve. C. Hippeau, *Le Gouvernement de Normandie*, III, 136-152.

⁸³Letter to William Short, New York, April 1, 1788, *Short Papers*. Manuscripts Division, Library of Congress.

⁸⁴The poor penmanship is not characteristic of the other Crèvecoeur letters in the Library of Congress. Miss Emily Mitchell, of the Manuscripts Division, kindly assisted in the reading of this letter.

[New York] is full of them.⁸⁵ . . .⁸⁶ This Country Approaches an Epoch more . . . dangerous than that of the War. . . . I hope that this Store ["Masse"] of . . . good Sense for which this country is so distinguished, . . . will . . . make the balance Lean to the right Side; it remains to be Known, how men who have been without restraint and law for so long a Time will Submit Themselves to the salutary restraint which is prepared for them."

The interest in an English ruler, here indicated, became most evident during the sitting of the Convention of 1787 as will be noted in the following chapter. The passage has been quoted at this point, however, because of its description of the state of mind that seems to have suggested the Prince Henry plan.

On December twenty-seventh, 1787, Nathan Dane remarked of the proposed constitution, "I doubt whether it has monarchy enough in it for some of our Massachusetts men, nor democracy enough for others."⁸⁷ A few days later General Knox, to whom this letter had been addressed, wrote to Washington that perhaps many of the party "for the most vigorous government" [a party including about "three-sevenths" of the State] "would have been more pleased with the new constitution had it been still more analogous to the British Constitution."⁸⁸ This use of the term "monarchy" might, however, refer to such features, say, as a long term for senators or great powers for the president.⁸⁹ For this reason an apparently less equivocal statement is of special interest. Such a statement was made by Benjamin Tupper⁹⁰ in April, 1787. Addressing Knox he wrote:

⁸⁵Compare letter of Nov. 9, 1787, to Jefferson in which Crèvecoeur says he will even fight for the new constitution, despite his age, and if it fails he will try to leave the country for it "will become the scene of anarchy and confusion." Mitchell, *op. cit.*, 338.

⁸⁶In the passage omitted there seems to be an assertion that the whole country will fall, once a part has broken itself off.

⁸⁷To General Knox, *Essex Institute Historical Collections*, XXXV, 89.

⁸⁸Jan. 14, 1788, Drake, *Life and Correspondence of Henry Knox*, 97.

⁸⁹The matter of definition has not become an essential part of this study up to this point. It will be considered in succeeding chapters.

⁹⁰On Tupper see *Appletons' Cyclopaedia of American Biography*, VI-VII, 180; Drake, *The Cincinnati of Massachusetts*, 489-490; McMaster, *History of the United States*, I, 505-507, 323.

"Perhaps your Honor may remember that on my return from the Ohio I declared in favour of Majesty for which your Honor gave me a gentle check . . . I cannot give up the Idea that Monarchy in our present situation is become absolutely necessary to save the States from sinking into the lowest abbiss of Misery. I have delivered my sentiments in all companies at this term, without reserve, and was, and am exceedingly pleased to find such a respectable number of my sentiments. I am clearly of Opinion if matters were properly arranged it would be easily and soon effected. The Old society of Cincinnati must once more consult and effect the Salvation of a distracted Country. While I remain in the Country [until removing to Ohio] I shall be a strong advocate for what I have suggested . . ."⁹¹

Colonel Tupper was not alone in his theory that the "Order of the Cincinnati" might prove itself an instrument for some such plan. This was the very charge brought against it by its opponents.⁹² But when one seeks to find expressions of the idea by the members of the society he is baffled. Written proof shows only that the Cincinnati kept up their esprit de corps and their support of orderly government.⁹³ General Hull, who delivered the Independence Day address to the Massachusetts Cincinnati in 1788, rejoiced in the "happy prospect of bidding . . . farewell to a feeble system, which could neither shield you from external invasion, or protect you from internal commotion. . . ." Incidentally, before discussing the promise of relief in the new constitution, he took occasion to eulogize America's ally, King Lois XVI, concluding, "Illustrious Monarch, but more illustrious by your virtues than your crown, long may you live the patron of the rights of man— . . . and may your reign be ever glorious." He congratulated his hearers on the fact that peaceable remedies were being applied in the United States instead of "the mad career of the ancients" which overwhelmed "the most celebrated

⁹¹Quoted by A. E. Morse, *Federalist Party in Massachusetts*, 42, n. 5.

⁹²For examples see Burke, "*Considerations on the Cincinnati*," especially pp. 3, 4, 6-8, 11; *Belknap Papers*, I, (*Massachusetts Historical Society Collections*, 5th ser., II) 277, 303, 307; S. Adams, *Works*, IV, 298-299; Drake, *The Cincinnati of Massachusetts*, 29, 34; Drake, *Life of Knox*, 146, 148; and *Massachusetts Historical Society Proceedings*, 2d ser., VIII, 178. For an amusing satirical attack see Franklin, *Works* (Smyth ed.), IX, 161-168.

⁹³This was evidenced in their services against the Shays Rebellion. See especially Knox to Washington, Jan. 14, 1787, Drake, *Life of Knox*, 148.

republicks." Indirectly he praised the Cincinnati for having "cheerfully relinquished their arms, when [their country's] safety was obtained" at the end of the War.⁹⁴ But there is a significant identity of leadership in a number of groups of the time, namely, the New England Cincinnati, the Newburgh Petitioners, and the members of the Ohio Company.⁹⁵ The absence of written evidence does not prove that others than Varnum and Tupper did not share their views.⁹⁶ Professor Hulbert, an undoubted authority on the correspondence of the promoters of the Ohio Company and allied enterprises, has said that "these men were close-mouthed business men; their objects and methods are rarely, if ever, stated in writing; adept in the art of communicating unessentials," they were "past masters in the art of refraining from writing at all."⁹⁷ A letter of the type of the Tupper letter, then, was an unusual burst of confidence. General Tupper did not hear the Independence Day oration in which Varnum announced his faith that the new Constitution, once adopted and in operation, would cure the ills of the time,⁹⁸ but he probably would have subscribed to these sentiments.

If anybody is to be convicted of promoting a monarchical plan for any or all of the United States it must be on circumstantial evidence. Unless different data appear such conclusions as the following are probably the only justifiable ones: First, that letters of the period bear out later charges, and that some persons in the United States, at least up to 1788, actually favored a monarchical government; second, that there is a reasonable probability that Gorham and some other leading citizens were ready to support such a change; third, that although there was a report that the Governor of Canada was following developments with suspicious care, the evidence, for the most part, points to the consideration of a Prussian, rather than an English prince;⁹⁹ fourth,

⁹⁴Hull, *Oration . . . to the Cincinnati*, 14, 11, 20.

⁹⁵A. B. Hulbert, *Records of the Ohio Company*, I, xl-xli, gives some suggestive statistics on this identity of leadership. Gorham does not appear to have taken part in these enterprises but must have been in touch with some of the participants through his activities in business and politics.

⁹⁶Above, p. 47.

⁹⁷Hulbert, *op. cit.*, I, lxxiv.

⁹⁸Tupper did not arrive at Marietta till the month after this oration was delivered. See Drake, *The Cincinnati in Massachusetts*, 490.

⁹⁹More attention will be paid to this point in the following chapter.

that as the tendency appeared to be almost entirely confined to New England, and this, too, at a time when the idea of the Union was too little advanced to be elevated to the end in itself that it later became, the plan may have been for a New England monarchy, including in time New York;¹⁰⁰ fifth, that the known character and public record of the men involved proves the motives to have been a desire for general security of property and "good government;" last, that the extreme caution which marked the utterances of the men probably most interested indicates that something of a "coup d'état" was the only method thought feasible for the change, and this indicates that it was expected that the people would, in general, oppose the change at first, but that their aversion would in time be overcome by the benefits to be received in peace, order, and prosperity.¹⁰¹

¹⁰⁰Dr. Samuel Eliot Morison, in a letter to the present writer, has said of the later secession movement in New England, "In all the correspondence regarding New England Separatism I have never seen any suggestion that the Northern Confederacy should be anything but a republic." Speaking of the Federalists in general, before 1788, he says that "there was a tendency" on their part "to grasp at the monarchical idea, as a drowning man grasps at a straw." See also H. Adams, *Documents relating to New England Federalism*.

¹⁰¹See above, page 56.

CHAPTER V

MONARCHICAL TENDENCIES IN THE UNITED STATES DURING THE FRAMING OF THE PRESENT CONSTITUTION

The need of constitutional reform was sufficiently agreed upon in Congress by February 21, 1787, to produce a resolution that a convention be held "for the sole . . . purpose of revising the Articles of Confederation" and for reporting to Congress and the state legislatures such provisions as they should agree necessary to "render the federal constitution adequate to the exigencies of Government & the preservation of the Union."¹ The twelve states that appointed delegates² were, in general, slow in getting them to Philadelphia, the meeting place, and it was not possible to organize the Convention until May twenty-fifth.³ From that time until September seventeenth the Convention was in almost daily session, with the exception of ten days of adjournment during which the Committee of Detail was to do its work.⁴ A good deal of uncertainty existed among the delegates as to how far they should go in changing the existing form of government. While the majority in the early days of the Convention apparently favored a less centralized form than the one later adopted one point was practically considered an established fact from beginning to end, namely, that the republican form should be continued.⁵

¹Farrand, *Records of the Federal Convention*, III, 14. (Many of the Farrand references to be used in this chapter could be made to other sources but for the sake of convenience will be confined to the *Records*.)

²Rhode Island sent no delegates. See Farrand, *op. cit.*, III, 18.

³See quotations from Washington's diary, *ibid.*, III, 20, 21, 26, and letter by King, *ibid.*, III, 26.

⁴Farrand, *op. cit.*, II, 128.

⁵Farrand believes that the New Jersey plan "more nearly represented what most of the delegates supposed that they were sent to do" than did any other plan, and only the fact that it was not presented until the delegates had become ac-

The existence of monarchical tendencies independent of the Constitutional Convention has been considered in the preceding chapter. It has also been asserted both by Americans outside and some within the Convention that there were delegates who cherished monarchical ideas. Jefferson claimed that such delegates had sought to obstruct the progress of the Convention when they foresaw that its work was to be of a republican nature.⁶ Luther Martin, a delegate from Maryland, in an address to the legislature of his state, said that while few had openly advocated "one general government . . . of a monarchical nature,"⁷ there were "a considerable number," observed by himself "and many others of the convention . . . as being in reality favorers of that sentiment; and, acting upon those principles, covertly endeavouring to carry into effect what they well knew openly and avowedly could not be accomplished."⁸ In contrast to this Mr. Baldwin, a delegate from Georgia, after favoring Ezra Stiles with an account "of the whole Progress in Convention" left the latter with the impression that no "Members in Convention had the least Idea of insidiously layg the Founda of a future Monarchy like the European or Asiatic Monarchies either antient or modern. But were unanimously guarded & firm against every Thing of this ultimate Tendency." On the other hand, Mr. Baldwin was later said to be one of those who declared that Hamilton had moved for a "King, Lords & Commons."⁹

customed to certain more radical ideas prevented its acceptance. (Farrand, *Framing of the Constitution*, 89.) Compare Fiske, *Critical Period in American History*. See also Mason's statement, May 21, 1787, in Farrand, *Records*, III, 24.

⁶"The Anas," Jefferson, *Writings* (Ford ed.), I, 158. Compare letter written in August, 1787, *ibid.*, IV, 426.

⁷He qualifies the statement by the phrase "under certain restrictions and limitations."

⁸"The Genuine Information . . . Relative to the Proceedings of the . . . Convention;" Farrand, *op. cit.*, III, 179. Connected with this assertion is a similar one involving a list of twenty names of members of the Convention "for a Kingly Government." The tale permits various interpretations. Its importance at this point is merely that according to one account Martin based his charge upon a paper which was of uncertain meaning and which he obtained only indirectly from its author. See *ibid.*, III, 306, 320-324.

⁹E. Stiles, *Diary*, Dec. 21, 1787, quoted in Farrand, *op. cit.*, iii, 169. For Baldwin's connection with the charge against Hamilton see anonymous letter, Aug. 30, 1793. Farrand, *op. cit.*, III, 369.

Some especially unequivocal statements on monarchical tendencies on the eve of the Convention are found among contemporary communications ¹⁰made to the Governor of Canada. "At this moment there is not a gentleman in the States from New Hampshire to Georgia, who does not view the present Government with contempt, who is not convinced of its inefficacy, and who is not desirous of changing it for a monarchy."¹¹ One class of the people of the States were said (somewhat illogically) to be proposing "a federal Government somewhat resembling the Constitution of the State of New York, with an annual Executive, Senate, and House of Assembly." The second class desired "a sovereign for life with two triennial Houses of Parliament," while the third wished to establish "an Hereditary Monarchy with a form of Government as nearly resembling Great Britain as possible."¹² While many of the first class looked to Washington as a candidate, "those of the second and third . . . cast their eyes to the House of Hanover for a Sovereign" and wished "for one of the King's sons."¹³ The third class was described as the ablest and "most powerful" of the three. These monarchists viewed "their own system if successful as affording the fairest prospect of a respectable and stable Government," and had "already fixed upon two gentlemen to go to Great Britain upon this subject, when they judge that matters are ripe for it."¹⁴ They looked forward to the Convention as furnishing them an opportunity "to know fully

¹⁰These communications were made to Lord Dorchester by his confidential agent in the States. (For an identification of the agent as Major Beckwith and a discussion of his status, see the "Archivist's Report," *Report on Canadian Archives, 1890*, p. xli.) Dorchester forwarded them to Lord Sydney (April 10, 1787) as "Certain Communications of a very interesting nature." The text is printed in *Report on Canadian Archives, 1890*, 97-99.

¹¹*Ibid.*, 97.

¹²The following quotations are from the *Report* just cited, page 98, and in keeping with other material in the communications.

¹³*Ibid.*, 98. A later passage in the same paper refers to able men in the States who are "greatly divided in opinion upon this subject, whether they shall raise an American to this dignity, or procure a Sovereign from Great Britain, or from France."

¹⁴*Ibid.*, 98. It is possible that the writer meant to suggest as one of these Dr. Griffiths of Virginia, described as a friend of Washington and an associate of "men in office, as well as of many respectable individuals in different parts of the country" and as "soon going to England, in hopes of being consecrated a Bishop." *Ibid.*, 99.

each others opinions, to form arrangements and to take such steps as [were] proper to give them effect." The motives for such radical changes were expressed in various terms such as the "unsurmountable" character of the "present public distresses," the fact that the existing federal government was "weakness itself," and they were summed up in the assertion that "the community in general" had been "finding from experience, that a Republican System however beautiful in theory, [was] not calculated for an extensive country."¹⁵

When the delegates were still arriving, preparatory to the opening of the Convention, George Mason of Virginia confided to his son that there were "some very eccentric opinions" about the work before them, and that "what is a very extraordinary phenomenon, we are likely to find the republicans, on this occasion, issue from the Southern and Middle States, and the anti-republicans from the Eastern." He believed, on second thought, that this was easily explained by the fact that "the people of the Eastern States, setting out with more republican principles, have consequently been more disappointed than we have been."¹⁶ A few days later, after the sessions of the Convention had begun, Mason returned to the subject. "When I first came here, judging from casual conversations with gentlemen from the different States, I was very apprehensive that soured and disgusted with the unexpected evils we had experienced from the democratic principles of our governments, we should be apt to run into the opposite extreme . . . of which I still think there is some danger, though I have the pleasure to find in the convention, many men of fine republican princi-

¹⁵"Even the Presbyterian Clergy are become Advocates for Monarchy." *Report on Canadian Archives, 1890, 98.*

¹⁶G. Mason to G. Mason, Jr., May 20, 1787, Farrand, *op. cit.*, III, 23-24. Mason cites "occasional conversations with the deputies of different States, and with some of the general officers of the late army" in Philadelphia "for a general meeting of the Cincinnati" as his only sources of information up to that time. Compare E. Carrington's letter to Jefferson, June 9, 1787, as given in "*Massachusetts Historical Society Proceedings*," 2d ser., XVII, 465. Carrington, writing in New York, the seat of the Continental Congress, declared, "The Eastern opinions are for a total surrender of the State sovereignties, and indeed some amongst them go to a monarchy at once. They have verged to anarchy, while to the southward we have only felt an inconvenience, and their proportionate disposition to an opposite extreme is a natural consequence . . .".

ples."¹⁷ A further statement by Mason on the subject will be noted in a later connection.

The "Pennsylvania Packet" for June 13, 1787, printed an article which had originally appeared in a Boston paper. It is doubly significant.¹⁸ It portrays, rather sympathetically, the course of reasoning that had led "men of speculation and refinement"¹⁹ to declare that "a Republican government was impracticable and absurd . . . cursed with inherent inefficiency . . . and that property was more precarious [under it] than under a despot." They had said that a despot "is a man, and would fear the retaliation of his tyranny. But an enthusiastic majority, steeled against compassion, and blind to reason, are equally sheltered from shame and punishment." Thus they had seen "with complacency, the stupid fury of Shays and his banditti, employed to introduce a more stable government whose powers they predicted, would soon be lodged in the hands of abler men. They raved about monarchy, as if we were ripe for it; and as if we were willing to take from the plough-tail or dram shop, some vociferous committee-man, and to array him in royal purple." The author refers to monarchical tendencies in such an assured way that his words rather strengthen a belief that charges were founded on facts.²⁰ In the second place it is significant that, from the time and place of its second appearance, it would be connected, in the minds of its readers, with the Federal Convention then in session at Philadelphia. The article not only declares "that our king, whenever Providence in its wrath shall send us one, will be a blockhead or a rascal,"²¹ but continues with a series of arguments to prove that the United States should not adopt a monarchy. Thus, "The idea of a royal or aristocratic government for America is very absurd. It is repugnant to the genius, and totally incompatible with the cir-

¹⁷Farrand *op. cit.*, III, 32. Compare letter by W. Grayson, May 24, 1787, *ibid.*, III, 26.

¹⁸From the *Independent Chronicle* printed at Boston, according to the heading, and signed "Camillus;" *Pennsylvania Packet*. June 13, 1787, p. 2. See also *ibid.*, Jan. 31, 1787, p. 2; Feb. 15, 1787, p. 3.

¹⁹They are further characterized as "most sincere lovers of their country" and "not the men to subvert empires."

²⁰The idea that the monarchists looked "with complacency" upon the Shays Rebellion would exonerate the Massachusetts Cincinnati from the charge, since they were active in opposing Shays and his forces.

²¹Apparently the writer had in mind some local demagogue rather than a widely admired European prince such as Henry of Prussia.

cumstances of our country. Our interests and our choice have made us republicans—We are too poor to maintain, and too proud to acknowledge a king. The spirit of finance and the ostentation of power would create burdens—These would produce the Shay's and Wheelers'. The army must be augmented—Discontent and oppression would augment of consequence." At this point the writer checked himself, only to start on another line of argument. "But this is mere idle speculation—for every honest man is surely bound to give his support to the existing government until its power becomes intolerable. A change, though for the better, is always to be deplored by the generation in which it is affected. Much is lost, and more is hazarded. Our republic has not yet been allowed a fair trial. The rebellion has called forth its powers and pointed out most clearly the means of giving it stability, let us, therefore, cherish and defend our constitution; and when time and wealth shall have corrupted it, . . . posterity may perform the melancholy task of laying, in human blood and misery, as we have done, the foundation of another government." He concluded with a declaration which was also a reminder and warning: "We who are now upon the stage, bear upon our memories too deep an impression of the miseries of the last revolution to think of attempting another."

A study of the speeches and actions of the delegates does much to determine to what extent they deserved the accusations of Jefferson or needed the advice of "Camillus." Randolph, of Virginia, on June first argued against unity in the executive as "the foetus of monarchy." There may have been an underlying meaning in Wilson's answer that "The people of Amer [ica] did not oppose the British King but the parliament . . . not . . . Unity but a corrupt multitude. . . ." ²² Some days later Mason is reported as asking, "Do gentlemen mean to pave the way to hereditary Monarchy?" and hoping "that nothing like a monarchy would ever be attempted in this Country," for the people never would "consent to such an innovation." ²³

In the meantime Franklin had quite calmly advanced the idea that from the general trend of human affairs the United States would eventually become a monarchy, and that the best that the

²²Farrand, *op. cit.*, I, 66, 71. Wilson was arguing at the time for a three years term and immediate reëligibility for the chief executive. *Ibid.*, I, 68.

²³*Ibid.*, I, 101-102.

✓Convention could do was to postpone the event.²⁴ Randolph²⁵ and Mason²⁶ could not view the situation with such philosophical *sang froid*, and refused to sign the Constitution on the grounds that it would end in "monarchy or a tyrannical aristocracy." The "great diversity of sentiment" in the Convention to which Nicholas Gilman referred July thirty-first, included an advocacy of "high toned Monarchy" by "vigorous minds and warm Constitutions."²⁷ Elbridge Gerry, on August thirteenth, wrote to General Warren that he sincerely hoped that the proceedings of the Convention, when complete, would "not be engrafted with principles of . . . despotism" which "some, you and I know, would not dislike to find in our national constitution."²⁸ Nevertheless, about the middle of August, there appeared in a Philadelphia paper an apparently authorized statement which read as follows: "We are informed, that many letters have been written to the members of the foederal convention from different quarters, respecting the reports idly circulating, that it is intended to establish a monarchical government, to send for the bishop of Osnaburgh, &c., &c.—to which it has been uniformly answered, tho' we cannot, affirmatively, tell you what we are doing, we can, negatively, tell you what we are not doing—we never once thought of a king."²⁹ It is generally conceded that Hamilton's speech of June eighteenth contained the most "monarchical" ideas advanced during the Convention, yet Hamilton later stated that he "never made a proposition in the convention which was not conformable to the republican theory."³⁰

²⁴Farrand, *op. cit.*, I, 83 ". . . there is a natural inclination in mankind to Kingly Government. It sometimes relieves them from Aristocratic domination. . . . It gives more of the appearance of equality among Citizens, and that they like." Compare Mr. Williamson's remarks, July 24th, i. e., "It was pretty certain he thought that we should at some time or other have a King; but he wished no precaution to be omitted that might postpone the event as long as possible.—Ineligibility a 2^d time appeared to him to be the best precaution."

²⁵*Ibid.*, II, 564, 631, and Conway, *Edmund Randolph*, 86.

²⁶Farrand, *op. cit.*, I, 101, and II, 632.

²⁷*Ibid.*, III, 66.

²⁸*Ibid.*, III, 69.

²⁹From the *Pennsylvania Journal*, August 22nd, *ibid.*, III, 73-74. (The same notice appeared in the *Pennsylvania Packet*, Aug. 20, 1787, p. 3.) Compare A. Martin's letter to Governor Caswell, Aug. 20th, *ibid.*, III, 73. The Bishop of Osnaburgh was the second son of George III.

³⁰Extract from J. C. Hamilton, *History of the United States*, Farrand, *op. cit.*, III, 368.

The apparently conflicting statements as to "monarchical" tendencies in the Convention are traceable, at least in part, to differences of definition. Hamilton, in the "Syllabus of the Federalist" emphasized the fact that "republic" had been "used in various senses" and "applied to aristocracies and monarchies," referring to Rome, with its kings; Sparta, with a senate for life; the United Netherlands, with its stadtholder and hereditary nobles; Poland and Great Britain with aristocratic and monarchical institutions.³¹ In the Convention he said, "As long as offices are open to all men, and no constitutional rank is established, it is pure republicanism."³² This concise definition is in no way inconsistent with the longer and more famous one by his one time colleague and later opponent, James Madison.³³

In his sketchy notes in the "Syllabus of the Federalist" Hamilton said that "monarch" was a term applied to a ruler independent of those governed.³⁴ In the Convention he said, "*Monarch* is an indefinite term. It marks not either the degree or duration of power. If this Executive Magistrate [the one he had proposed] wd. be a monarch for life—the other propd. [proposed] by the Report from the Committee of the whole, wd. be a monarch for seven years."³⁵

Probably many persons at the time considered "monarchy" and "tyranny" as almost interchangeable. Hamilton himself in the first of the two statements just cited ³⁶ was thinking of monarchy in this sense in a style which contrasts with his conception of it when, at other times, he declared the British monarchy

³¹*The Federalist* (Ford ed.), xliii.

³²Farrand, *op. cit.*, I 432.

³³" . . . a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; . . . It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified." *The Federalist* (Ford ed.), 246.

³⁴*Ibid.*, xlv.

³⁵Farrand, *op. cit.*, I, 290.

³⁶Compare his warning, ". . . if we incline too much to a democracy, we shall soon shoot into a monarchy." *Ibid.*, I, 432.

to be the best form of government in the world.³⁷ Paterson of New Jersey, in opposing a measure unfavorable to the small states, said he "had rather submit to a monarch, to a despot, than to such a fate."³⁸ Wilson recognized and refuted this association of terms by saying, "Where the Executive was really formidable, *King* and *Tyrant*, were naturally associated in the minds of people," but "where the Executive was not formidable" the legislature and tyranny "were most properly associated."³⁹ In line with this was an assertion made by McClurg of Virginia. He was "not so much afraid of the shadow of monarchy as to be unwilling to approach it; nor so wedded to Republican Govt. as not to be sensible of the tyrannies that had been & may be exercised under that form. It was an essential object with him to make the Executive independent of the Legislature."⁴⁰

It was both asserted⁴¹ and denied⁴² that a "unity of the Executive . . . would savor too much of a monarchy." One delegate went so far as to declare that "a single Magistrate . . . will be an elective King, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children."⁴³

Many of the delegates apparently regarded long and certain tenure so fundamental a characteristic of monarchy that they refused to adopt a long term of office for the President.⁴⁴ Thus Mason "considered an Executive during good behavior as a softer name only for an Executive for life," and warned the assembly that "the next would be an easy step to hereditary Monarchy."⁴⁵ Extensive executive powers spelled monarchy, actual or potential, to the minds of many. Mr. Mason admitted that a monarchy possessed secrecy, dispatch, and energy, the advantages urged for a single executive, "in a much greater degree than a republic."⁴⁶ He opposed a complete veto for the executive on the

³⁷Farrand, *op. cit.*, I, 288.

³⁸*Ibid.*, I, 179.

³⁹*Ibid.*, II, 300-301. Compare his words on June 16th, *ibid.*, I, 254.

⁴⁰*Ibid.*, II, 36.

⁴¹As by Randolph. See *ibid.*, I, 74.

⁴²As by Wilson. See *ibid.*, I, 66, 74.

⁴³Mr. Williamson of North Carolina. *Ibid.*, II, 101.

⁴⁴See *ibid.*, II, 35-36.

⁴⁵*Ibid.*, II, 35.

⁴⁶*Ibid.*, I, 112.

grounds that it would tend to constitute a monarchy more dangerous than the British Government—"an elective one."⁴⁷ Mr. Rutledge "was by no means disposed to grant so great a power" as the appointment of judges "to any single person" because, as he said, "The people will think we are leaning too much towards Monarchy."⁴⁸ Gerry opposed the appointment of the senate by the national executive as "a stride towards monarchy that few will think of!"⁴⁹ The monarchical character of the war powers of the executive did not elude Charles Pinckney's watchful eye. Powers of peace and war in the executive "would render the Executive a Monarchy, of the worst kind, towit an elective one."⁵⁰

With these ideas as to what the members of the Convention did or did not consider monarchical characteristics one may the more profitably consider the so-called Hamilton plan.⁵¹ Its monarchical character is largely a matter of definition.⁵²

It will be recalled that Hamilton denied having made any "proposition to the convention which was not conformable to the republican theory."⁵³ Yet, according to Madison's notes, Hamilton "acknowledged himself not to think favorably of Republican Government" and "addressed his remarks to those who think favorably of it, in order to prevail on them to tone their Government as high as possible."⁵⁴ The conflict of ideas in Hamilton's mind may well be summed up in his own words, "I fear Republicanism will not answr. [answer] and yet we cannot go beyond it."⁵⁵ Hamilton felt that one branch of the government could well be especially devoted to the representation of the "poorer order of citizens."⁵⁶ His plan provided for an assembly elected by the

⁴⁷Farrand, *op. cit.*, I, 101.

⁴⁸*Ibid.*, I, 119.

⁴⁹*Ibid.*, I, 152.

⁵⁰*Ibid.*, I, 64-65. Compare Randolph's statement, *ibid.*, II, 67.

⁵¹This formed the chief part of a speech which he made in the Convention June 18th. See *ibid.*, I, 282-293. See also his remarks June 26th, *ibid.*, I, 424, 432.

⁵²See interpretations by Farrand, *Framing of the Constitution* 88; Von Holst, *History of the United States*, I, 111; Krauel, "Prince Henry of Prussia", *American Historical Review*, XVII, 50.

⁵³Above, p. 82.

⁵⁴Farrand, *op. cit.*, I, 424.

⁵⁵*Ibid.*, I, 303.

⁵⁶*Ibid.*, I, 424.

people, "on a broad foundation."⁵⁷ He did not propose, however, that the only check on the democratic assembly was to be in a democratic senate and a democratic chief magistrate. Thus he proposed that "one body of the legislature be constituted during good behavior or life" and that the executive have a similar tenure.⁵⁸ The vast extent of the country "almost led him to despair" of the establishment of a republican government.⁵⁹ His expedient against the operation of centrifugal forces was to have the national executive appoint the state governors and to give to these latter an absolute veto over the state legislatures.⁶⁰ This he considered not unrepresentative since the national executive himself received his election, though indirectly, from the people.⁶¹ Much has been made of Hamilton's expressed preference for the British constitution.⁶² He declared he would "go to the full length of republican principles" in order to approach as near as possible to "the excellency of the British executive."⁶³ But Hamilton was not a man to make any government an end in itself. He wished to approach the British form because he was convinced that "nothing short of such an executive can be efficient."⁶⁴ Hamilton, under the existing circumstances, did not even desire to transfer the British monarchical form intact to American soil. He believed at this time a maxim he later expressed by saying that "what may be good at Philadelphia, may be bad at Paris, and ridiculous at Petersburg,"⁶⁵ a formula which, of course, could be reversed and made to include London. His real desire seems to have been to combine the separation of powers and the stability of the British form with the representative feature of a republic

⁵⁷Farrand, *op. cit.*, II, 553-554, I, 291.

⁵⁸*Ibid.*, I, 300.

⁵⁹*Ibid.*, I, 288.

⁶⁰*Ibid.*, I, 293.

⁶¹See *ibid.*, I, 292. Compare *Journal of the Convention*, 113. The "good behavior" members of the national legislature were to be chosen by electors. Farrand, *op. cit.*, I, 291.

⁶²See, for examples, *ibid.*, I, 288-289, and Jefferson, *Writings* (Ford ed.), I, 166; IX, 295; X, 34.

⁶³Farrand, *op. cit.*, I, 299-300.

⁶⁴*Ibid.*, i, 299.

⁶⁵Letter to La Fayette, Jan. 6, 1799; Hamilton, *Works* (J. C. Hamilton ed.), VI, 388.

and the popular participation consistent with democracy, and thus to meet the peculiar needs of America.

The form of government described by Hamilton might well appear a sort of elective monarchy or stadtholdership and as such immediately antagonize his fellow citizens. Aside from the very general prejudice in America against such forms, due to an exaltation of republican theory, the unhappy experiences of the Dutch with their stadtholder and the Poles with their elective monarch were well known.⁶⁶ Yet there are grounds on which to take issue with the conclusion that Hamilton presented his views with no further hope nor purpose than to counterbalance the New Jersey plan and to reach a happy medium between the two.⁶⁷ Hamilton⁶⁸ "hoped Gentlemen of different opinions would bear with him . . . and recollect the change of opinion on this subject which had taken place and was still going on." He reminded them that it "was once thought that the power of Congs [Congress] was amply sufficient to secure the end of their institution. The error was now seen by every one . . . This progress . . . led him to anticipate the time, when others as well as himself would join" in the assertion that the British Government was the only one in the world which united "public strength with individual security."

John Adams was always sure that his "Defence of the Constitutions of the United States," which reached America and was republished there on the eve of the Convention⁶⁹ did much to make the Convention a success.⁷⁰ Despite its later unpopularity as "monarchical" propaganda⁷¹ the book was certainly well received at first.⁷² The comparative readiness of most of the delegates to be guided by the "long experience" of the mother coun-

⁶⁶See Farrand, *op. cit.*, I, 90, 92, 102-103, n., 326-327, 449, 476; II, 9, 31, 67-68, 202, 541; and I, 290-291, 459; II, 30, 31, 109-110.

⁶⁷See Farrand, *Framing of the Constitution*, 87, 89.

⁶⁸According to Madison's record of his speech on June 18th, Farrand, *Records*, I, 288.

⁶⁹See *Massachusetts Historical Society Collections*, 5th ser., IV, 332; Jay, *Correspondence*, III, 247.

⁷⁰See John Adams's recital of testimonials to this effect by Mr. Dickinson, Governor Martin, and others. *Massachusetts Historical Society Collections*, 5th ser., IV, 332-333.

⁷¹*Massachusetts Historical Society Proceedings*, 2d ser., XV, 118-119; C. F. Adams, *Life of John Adams*, 433.

⁷²*Massachusetts Historical Society Proceedings*, 2d ser. XV, 118; Jay, *Correspondence*, III, 251; Jefferson, *Works* (Washington ed.), II, 128.

try⁷³ was founded on the Americans' familiarity with Blackstone, Montesquieu, and Locke,⁷⁴ as well as with their practical experience under the type of government portrayed by them. But Adams's presentation of the old ideas came at a psychological moment, and must have been effective in promoting the change of opinion which Hamilton believed he observed. The "Defence" praised the British constitution to an extent to satisfy the heart of Hamilton himself.

Some of the delegates who agreed with Hamilton in dreading too much democracy were such strong believers in states' rights as to be out of sympathy with Hamilton's entirely nationalistic plan.⁷⁵ But there were others in the convention who very likely were deterred from full sympathy with Hamilton's plan by the one fear of risking "what was then deemed the last chance for a respectable union, on a scheme which would be hopeless of acceptance."⁷⁶ A survey of the position of these men will follow.⁷⁷

It has been said that John Dickinson "frankly joined that minority which was outspoken in its belief in a monarchy—an action that comported with his refusal to sign the Declaration of Independence and his reluctance to embark upon the stormy sea of Revolution."⁷⁸ Not long after the opening of the Convention he remarked "that a firm Executive could only exist in a limited Monarchy . . . A limited Monarchy he considered as *one* of the best Governments in the world. . . . It was certain that equal blessings had never yet been derived from any of the republican form."⁷⁹ But he perceived that a "limited monarchy was out of the question," because of the "spirit of the times" and the "state of our affairs," and because it was impossible to create "by a stroke of the pen" a "House of Nobles," which he considered essential to this form of government. He therefore looked to remedying the republican form in such a way as to make it more perfect than

⁷³See "Great Britain" in "General Index," Farrand, *op. cit.*, III, 661.

⁷⁴See *New International Encyclopaedia*, III, 363; XVI, 198; XIV, 276.

⁷⁵H. C. Lodge, *Alexander Hamilton*, 61.

⁷⁶*Ibid.*, 61.

⁷⁷In the present chapter the writer has used parts of several chapters in her earlier (unprinted) thesis in which a study was made of "Monarchical Tendencies in the United States from 1782 to 1787."

⁷⁸C. A. Beard, *Economic Interpretation of the Constitution*, 194.

⁷⁹Farrand, *op. cit.*, I, 86-87. Reread comments on Dickinson's views on government, above, p. 19.

it had proved to be in the republics of the ancient world.⁸⁰ He doubtless voted for a good behavior tenure for the executive as a means to this end.⁸¹

Gorham's attitude towards monarchy at the time of the Convention is of peculiar interest in view of his supposed connection with the Prince Henry of Prussia affair. His only reference to monarchy, so far as we can learn from the records, was made in supporting the proposal that the central government should guarantee a republican constitution to each state. He observed that it would be strange that the general government should "be restrained from interposing" to subdue any rebellion that might take place in a state, for "At this rate an enterprising Citizen might erect the standard of Monarchy in a particular State, might gather together partizans from all quarters, might extend his views from State to State, and threaten to establish a tyranny over the whole."⁸² His manner of speaking indicates that he considered an attempt at monarchy by no means impossible or impracticable but does not suggest any sympathy with the idea. It does, however, suggest something as to the course that might once have been considered in connection with the "monarchical plot" of the preceding year.

Rufus King, whatever may have been his attitude towards a proposal for importing a foreign prince, certainly favored the strongest proposals made in the Convention. He was one of the three delegates who, on June fourth, voted for a complete negative for the executive.⁸³ On June first he upheld a seven year term⁸⁴ for this official and later, when this term was negatived, he expressed anxiety lest too short a term be adopted.⁸⁵ On July twentieth he is reported as saying that the executive "ought not to be impeachable unless he hold his office during good behavior, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised" for impeachment.⁸⁶ On the other hand, his suggestion on July twenty-fourth, that the execu-

⁸⁰Farrand, *op. cit.*, I, 87.

⁸¹*Ibid.*, II, 36.

⁸²July 18, 1787, *ibid* II, 48.

⁸³*Ibid.*, I, 108.

⁸⁴*Ibid.*, I, 72.

⁸⁵July 19th, *ibid.*, II, 59.

⁸⁶*Ibid.*, II, 67.

tive term be twenty years, since "This is the medium life of princes," is noted by Madison as "possibly . . . meant as a caricature" of the immediately preceding suggestions for terms of eleven and fifteen years.⁸⁷ Hamilton felt sure that King understood his point of view for during his absence from the Convention, in the latter part of August, it was King whom he asked to keep him informed of any new developments.⁸⁸

A motion for a good behavior term for the executive was made on July seventeenth by James McClurg of Virginia.⁸⁹ His expressed object was to make this official independent of the legislature.⁹⁰ Mr. Broom of Delaware "highly approved" the good behavior motion.⁹¹ Apparently neither of these men was an effective speaker or particularly influential in the Convention.⁹²

Hamilton later pointed out that Madison voted for the "highest toned" feature he had proposed.⁹³ Not only did Madison vote for good behavior tenure for the executive⁹⁴ but he supported it, with considerable caution,⁹⁵ during the debates. But in a footnote he explained, "This vote is not to be considered as any certain index of opinion, as a number in the affirmative probably had it chiefly in view to alarm those attached to a dependence of the Executive on the Legislature, & thereby facilitate some final arrangement of a contrary tendency."⁹⁶ As he said in "The Federalist," Madison was convinced that "no other form [than a Republic] would be reconcilable with the genius of . . . America; with the . . . principles of the Revolution; or with that . . . determination which animates every votary of freedom to rest all

⁸⁷Farrand, *op. cit.*, II, 102 and n.

⁸⁸*Ibid.*, III, 70. Note that King was later a leader of the Nationalistic party. *New International Encyclopaedia*, XIII, 241.

⁸⁹Farrand, *op. cit.*, II, 33.

⁹⁰*Ibid.*, II, 36.

⁹¹*Ibid.*, II, 33.

⁹²See Pierce, "Character Sketches," *ibid.*, III, 95, 93.

⁹³*Ibid.*, III, 368-369, 398.

⁹⁴*Ibid.*, II, 36.

⁹⁵For example he recorded that his support of McClurg's motion was due to his "particular regard" for the mover. *Ibid.*, II, 34-35. See his remarks on impeachment on the same occasion.

⁹⁶*Ibid.*, II, 36. Six states voted in the affirmative, four in the negative.

our political experiments on the capacity of mankind for self-government."⁹⁷

At the time when Gouverneur Morris was named minister to France George Mason deprecated his appointment on the grounds of Morris's political heresy. ". . . in his place, as a Member of the federal Convention in Philadelphia," wrote Mason, "I heard him express the following Sentiment.—'we must have a Monarch sooner or later.' [tho' I think his word was a *Despot*] 'and the sooner we take him, while we are able to make a Bargain with him, the better.'"⁹⁸ Yet in debate Morris declared himself "as little a friend to monarchy as any gentlemen. He concurred . . . that the way to keep out monarchical Govt. was to establish such a Republ Govt. as wd. make the people happy and prevent a desire of change."⁹⁹ It is difficult to discover what means this "fickle and inconstant"¹⁰⁰ delegate really favored as attaining this end. On July sixth he said, "We should either take the British Constitution altogether or make one for ourselves."¹⁰¹ On July seventeenth he seconded McClurg's motion for a good behavior tenure, expressed "great pleasure" at hearing of "so valuable an ingredient," and was even "indifferent how the Executive should be chosen, provided he held his place by this tenure."¹⁰² This was at a time when the appointment of the executive was to be by the legislature. Two days later he was advocating election by the people and a two year term.¹⁰³ Earlier in the Convention Morris had approved a life tenure for the Senate and appointment of senators by the executive.¹⁰⁴

⁹⁷*The Federalist* (Ford ed.), 245. For further remarks by Madison on monarchy see Farrand, *op. cit.*, I, 70; II, 35.

⁹⁸Mason to Monroe, Jan. 30, 1792. *Monroe Papers*. Manuscripts Division, Library of Congress.

⁹⁹Farrand, *op. cit.*, II, 35-36.

¹⁰⁰Pierce, "Character Sketches," *ibid.*, III, 92.

¹⁰¹*Ibid.*, I, 545.

¹⁰²*Ibid.*, II, 33.

¹⁰³*Ibid.*, II, 54. The direct reason for this stand was his desire to avoid impeachments. Morris believed a two year term would in fact be indefinitely extended so long as the magistrate "should behave himself well." *Ibid.*, II, 54. The good behavior tenure had been voted down in the meantime.

¹⁰⁴*Ibid.*, I, 512-513.

Read of Delaware, though from a small state, favored a strong national government,¹⁰⁵ appointment of the Senate by the chief executive¹⁰⁶ and absolute negative for the executive,¹⁰⁷ and a good behavior tenure for the Senate.¹⁰⁸ His delegation voted for a good behavior tenure for the executive.¹⁰⁹

Finally, the question may arise as to whether Hamilton expected support from Washington. Although Hamilton quite possibly knew of the outcome of the Nicola affair, he may have had reason to believe that Washington had been gradually tending towards stronger measures.¹¹⁰ At any rate, his expectation that, although he had not compared his ideas with Washington, the latter would receive them with courteous consideration,¹¹¹ was not disappointed. The answer to Hamilton's letter of July 3d reveals sympathy and understanding on the part of Washington, who thanked the former for his letter, and wished that he were back in the Convention, since the crisis was "important and alarming." Washington almost despaired "of seeing a favorable issue to the proceedings of our convention," felt contempt for "narrow-minded" men who opposed a "strong and energetic government," and believed that their contention that the people would not accede to the form proposed was only an excuse for their opposition. Most important of all is his conclusion that "admitting that the present sentiment is as they prognosticate, the proper question ought nevertheless to be, Is it, or is it not the best form that such a country as this can adopt?"¹¹² As presiding officer of the Convention Washington had little opportunity to express his views on the points at issue.

We have said that Hamilton's proposals were the most "monarchical" of any made in the Convention and that while not voted

¹⁰⁵Farrand, *op. cit.*, I, 136, 202, 463.

¹⁰⁶*Ibid.*, I, 151.

¹⁰⁷*Ibid.*, II, 200.

¹⁰⁸*Ibid.*, I, 409-421.

¹⁰⁹*Ibid.*, II, 36. He was later reputed a "monarchist" by some persons in his home state. See Rodney, *Diary*, Mar. 22, 1801. Manuscripts Division, Library of Congress.

¹¹⁰Such a tendency is suggested by a study of Washington's correspondence from July, 1786, through March, 1787. Washington, *Writings* (Ford ed.), XI. See above page 57.

¹¹¹Hamilton to Washington, July 3, 1787, *Works* (J. C. Hamilton ed.), I, 436.

¹¹²July 10, 1787, Washington, *Writings* (Ford ed.), XI, 162.

upon as a whole some parts appeared as motions and received considerable support. Hamilton professed to believe that popular opinion might also come to support such ideas. In his speech of June eighteenth he declared that "a great progress [had] been already made" and was "still going on in the public mind." This led him to believe that in time the people would be "unshackled from their prejudices," and "be ready to go as far at least" as he proposed.¹¹³ A fortnight later, in his passage through the Jerseys, he believed he saw evidence that an "astonishing revolution" had already taken place in the minds of the people, and that they had come to desire "something not very remote from that which they had lately quitted." He wrote, "These appearances, though they will not warrant a conclusion that the people are yet ripe for such a plan as I advocate, yet serve to prove that there is no reason to despair of their adopting one equally energetic, if the Convention should think proper to propose it."¹¹⁴ Jefferson later asserted that the monarchical ideas of Hamilton and other delegates, being noised abroad among the people, were responsible for their "strong opposition to the conventional Constitution."¹¹⁵ But Jefferson's prejudice against his great opponent may have colored his impressions just as Hamilton's prejudice in favor of his own views may have lent his impressions a rosy tinge. The truth seems to be that public opinion of the period was relatively unformed and unfathomable. Contemporary observations on political movements were chiefly confined to the writings of political leaders who in that day, far more than now, formed a class distinct from their constituents. When we seek to know the public mind through the delegates' impressions of it we are again baffled, for these impressions were often contradictory. Madison was not alone in his assertion that it was impossible to know the public will on the object of the Convention.¹¹⁶ Wilson sensibly pointed out the danger that the sentiments of "the particular circle in which one moved," be "mistaken for the general voice."¹¹⁷

¹¹³Farrand, *op. cit.*, I, 291.

¹¹⁴Letter to Washington, July 3, 1787, Hamilton, *Works* (J. C. Hamilton ed.), I, 435-436; (Lodge ed., VIII, 175-176).

¹¹⁵Jefferson, *Writings* (Ford ed.), I, 159.

¹¹⁶Farrand, *op. cit.*, I, 215.

¹¹⁷*Ibid.*, I, 253.

While professing that the people's opinions could not be known on particular points, Madison was convinced that "In general they believe there is something wrong in the present system that requires amendment," and that if the Convention's plan should fail the people, in despair, would "incline to Monarchy."¹¹⁸ Gerry, on the contrary, held that the mere savour of despotism would alarm the people.¹¹⁹ Mason admitted that "the mind of the people of America, as elsewhere, was unsettled as to some points" but insisted it was "settled as to others," one of which was "an attachment to republican Government." The basis of his conclusion was the general agreement of the state constitutions in the matter.¹²⁰ Mr. Gerry did not hesitate to announce, "There were not $\frac{1}{1000}$ part of our fellow citizens who were not agst. every approach towards Monarchy."¹²¹

Hamilton's notes for June 1st include a clear and interesting outline of Randolph's speech of that date. The part pertaining to public opinion is as follows:

- "I Situation of this Country peculiar —
- II — Taught the people an aversion to Monarchy
- III All their Constitutions opposed to it —
- IV — Fixed character of the people opposed to it —
- V — If proposed 'twill prevent a fair discussion of the plan."¹²²

The situation, as it appeared to Madison, is summed up in his letter to Jefferson of September 6th, as follows:

"Nothing can exceed the universal anxiety for the event of the meeting here. Reports and conjectures abound concerning the nature of the plan which is to be proposed. The public however is certainly in the dark with regard to it."¹²³ The Convention is equally in the dark as to the reception wh. may be given to it on its publication. All the prepossessions are on the right side, but

¹¹⁸Farrand, *op. cit.*, I, 220-221.

¹¹⁹*Ibid.*, I, 220.

¹²⁰*Ibid.*, I, 339.

¹²¹*Ibid.*, I, 425.

¹²²*Ibid.*, I, 72.

¹²³The lady who is reported by McHenry to have asked Franklin, "Well Doctor what have we got a republic or a monarchy?" was certainly "in the dark." Her question, however, betrays no special anxiety. *Ibid.*, III, 85.

it may well be expected that certain characters will wage war against any reform whatever.¹²⁴

There were two classes among the people who, more than any others, were said to entertain thoughts of monarchical government for the United States. These were the Cincinnati and the Loyalists. The most definite charge against the former was probably that made by M. Otto, French chargé d'affaires at New York. He reported that the Cincinnati were "interested in the establishment of a solid government" since under a feeble one they had not received their pay. Their desire was to consolidate the states and to "place at their head . . . Washington with all the prerogatives of a crowned head." This they threatened to do by force as soon as they should be "convinced of the futility of the *Convention*." Otto considered this project entirely absurd because of the feebleness and unpopularity of the Cincinnati.¹²⁵

The charge connected with the Loyalists had wider connections, being bound up with the belief in some quarters, that the Convention might set up a monarchical government and invite a British prince to the throne. These rumors became so current in the midsummer of 1787, and members of the Convention were so plied with questions about it that an unofficial, but seemingly authorized, denial was inserted in a Philadelphia paper.¹²⁶ A similar report, circulating in Europe, was indignantly denied by William Short¹²⁷ an American living in Paris. Short ridiculed the charge as being as incredible as a report would be which claimed that the English people, weary of existing burdens and disturbances, wished to "return under the dominion of the Dukes of Normandy . . . & had solicited the King of France to take them under his protection" He based his denial in part upon the fact that "nothing of the sort had been heard of within any part of the

¹²⁴These were the men holding state offices under the Articles of Confederation. See Hamilton's letter to Washington, July 3, 1787, Hamilton, *Works* (Lodge ed.), VIII, 175. Madison's letter to Jefferson is in Farrand, *op. cit.*, III, 77-78.

¹²⁵Written in New York, June 10, 1787, by M. Otto to Count de Montmorin, secretary of state for foreign affairs. Farrand, *op. cit.*, III, 43-44. Otto's suspicions may have been aroused by the presence of numerous members of the society at Philadelphia at the time of the Constitutional Convention. They were, however, attending their own regular convention.

¹²⁶Above, page 82, n. 29.

¹²⁷On Short's career abroad see *Appletons' Cyclopaedia of American Biography*, V, 516.

United States, judging by letters he had received from that country as late as September ninth of that year [1787]."¹²⁸ Short could not have made this last statement the following summer for by that time he must have received the statement by Crèvecoeur that "a very large number of persons" in New England "would like to return to English domination."¹²⁹ In fact, by the opening of the new year (1788) Short's American correspondents had led him to believe that astounding strides "towards a toleration of Monarchical" principles had already been made.¹³⁰ That similar reports received credence in British official circles is certain. Lord Sydney, writing at Whitehall, September 14, 1787, addressed Lord Dorchester as follows:

"The report of an intention on the part of America to apply for a sovereign of the house of Hanover has circulated here;¹³¹ and should an application of that nature be made, it will require a very nice consideration in what manner so important a subject should be treated. But whatever ideas may have been formed upon it, it will upon all accounts be advisable that any influence which your lordship may possess should be exerted to discourage the strengthening their alliance with the house of Bourbon, which must naturally follow were a sovereign to be chosen from any branch of that family."¹³²

Late in 1788 Lord Dorchester enclosed a memorandum of the Federal Convention in a letter to Lord Sydney. It mentioned

¹²⁸Letter of Oct. 15, 1787, *William Short Papers*. Manuscripts Division, Library of Congress.

¹²⁹Described above, p. 71.

¹³⁰This is indicated in Short's letter of January 31st, quoted below, page 100.

¹³¹Franklin, in France in 1785, wrote that Britain was circulating there tales of distress in America and desire for a "restoration of the old Government." [Letter to Jay, Feb. 8; Franklin, *Writings* (Smyth ed.) IX, 287-288.] For specimen of a similar tale in America see *Pennsylvania Packet*, Jan. 8, 1787, p. 2. Prince William Henry (not the "Bishop of Osnaburgh") apparently visited America late in 1786, judging by a newspaper item of his arrival at Halifax. (*Ibid.*, Oct. 31, 1786, p. 2.) The military preparedness of Canada under Lord Dorchester was stressed in a newspaper article, June 23, 1787. (*Ibid.*, p. 3.)

¹³²Farrand, *op. cit.*, III, 80-81. This suggests that Lord Sydney gave considerable weight to Lord Dorchester's enclosure of April 10th. See above, p. 78. A somewhat similar communication of a later year may be found below, page 105.

"Colonel Hamilton's" plan, "that had in view the establishment of a monarchy, and the placing the crown upon the head of a foreign prince, which was overruled, although supported by some of the ablest members of the convention."¹³³

A letter of this general type, circulating in Connecticut, apparently in July and August, 1787, greatly interested Alexander Hamilton. He set on foot an investigation of its source and reception.¹³⁴ Colonel Humphreys reported that the letter had been "received and circulated with avidity" by the Loyalists "whether it was fabricated by them or not." He further declared that "the quondam Tories" had "undoubtedly conceived hopes of a future union with G. Britain, from the inefficiency of our Government." He had seen a letter, written at the time of the tumults in Massachusetts the preceding winter, "stating the impossibility of our being happy under our present Constitution, and proposing . . . that the efforts of the moderate, the virtuous, and the brave, should be exerted to effect a reunion with the parent State. He mentioned, among other things, how instrumental the Cincinnati might be, and how much it would redound to their emolument."¹³⁵ Even if Humphreys' report was faithful to the facts the sentiment of the "quondam Tories" was not an effective factor so soon after the War. It will be recalled that thousands of them had left the country and that those who remained were in no position to put their ideas into effect. Hamilton, in September, 1787, said a reunion with Great Britain was "not impossible, though not much to be feared." He thought the "most plausible shape . . . would be the establishment of a son of the present monarch . . . with a family compact."¹³⁶ Later he pointed out the probability that such a compact would be opposed to the point of war by France, as too greatly increasing British resources. He added that the Americans would soon regain their independence, in any case.¹³⁷

¹³³Enclosed in letter of date Oct. 14, 1788, Farrand, *op. cit.*, III, 354. The letters of Phineas Bond, British consul at Philadelphia in 1787, appear to contain no similar report. See, for example, his letters of July 2 and September 20, 1787, *American Historical Association Report*, 1896, I, 539, 546.

¹³⁴Hamilton, *Works* (J. C. Hamilton ed.), I, 440.

¹³⁵*Ibid.*, I, 442-443.

¹³⁶"Impressions as to the new constitution (Sept. 1787)," Hamilton, *Works* (Lodge ed.), I, 402.

¹³⁷"Americanus" (Feb., 1794), *ibid.*, IV, 277-279.

The proposed Constitution was made public in September when the Convention completed its work. Its reception by the public and the charges of "monarchism" against its first administrators will be considered in the following chapter.

CHAPTER VI

MONARCHICAL TENDENCIES IN THE UNITED STATES FROM THE CLOSE OF THE CONSTITUTIONAL CONVENTION TO 1801

During the sharply contested movement for ratification the Constitution was attacked from some quarters as a monarchical instrument.¹ Thus George Mason, in the Virginia convention, advocating rotation in office for the presidency, said, “. . . as it now stands, he may continue in office for life; or, in other words, it will be an elective monarchy.”² His colleague, James Monroe, agreed with him,³ while William Grayson thought such continuance “highly probable.”⁴ Earlier in the convention Patrick Henry had delivered his famous denunciation of the Constitution, namely, that “among other deformities . . . it squints towards monarchy.” He had gone on to say, “If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him, and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design.”⁵ Mr. Lowndes, in the South Carolina convention, declared, “On the whole, this was the best preparatory plan for a monarchical government he had read.” It “came so near” to the British form that, “as to our changing from a republic to a monarchy, it was what everybody must naturally expect.”⁶

¹This was not a surprise to the framers, according to James Wilson, who said, “It was expected by many, that the cry would have been against the powers of the President as a monarchical power.” Elliot, *Debates on the Federal Constitution*, II, 511.

²*Ibid.*, III, 485.

³*Ibid.*, III, 489.

⁴*Ibid.*, III, 491.

⁵*Ibid.*, III, 58-59. Grayson, Monroe, and Mason had noted foreign intermeddling as an important factor in the situation.

⁶*Ibid.*, IV, 311. See also Maclaine, in North Carolina convention (*ibid.*, IV, 135) and, in contrast, Smith, in Massachusetts convention (*ibid.*, II, 102-103).

The private correspondence of the time contains some similar expressions. The wide circulation of such fears is suggested by the recognition of them by Edward Carrington of Virginia, writing in New York,⁷ and William Plumer, writing in New Hampshire.⁸ Richard Henry Lee, addressing Samuel Adams, denounced the proposed system as "elective despotism," and remarked that chains were still chains, "whether made of gold or iron."⁹ William Short, following American developments from his residence in France, wrote to a friend in London that the proposed constitution "has converted the thirteen republics into one mixed monarchy—for notwithstanding the humble title of President elective from four years to four years, he will have greater powers than several monarchs have." He feared not so much the immediate danger as that "the President of the eighteenth century" would "form a stock on which will be engrafted a King in the nineteenth."¹⁰ In January, 1788, Short declared to Grayson that "the proposed Constitution" and "a great part of what is written on it" led him to believe that "the Citizens of America [had] made in three years, larger strides towards a toleration of monarchical principles than it had been supposed possible they should have made in as many centuries."¹¹ His friend Nelson, in a letter written at Williamsburgh, in March of that year, cited foreign precedents to prove that the presidency would become an hereditary office. He believed he would accept the Constitution without hesitation could the president become ineligible for

⁷To Jefferson, Oct. 23, 1787, *Massachusetts Historical Society Proceedings*, 2d ser., XVII, 482.

⁸To D. Tilton, Dec. 16, 1787, *William Plumer Letters*. Manuscripts Division, Library of Congress.

⁹Oct. 5, 1787, *Letters of R. H. Lee* (J. C. Ballagh ed.), II, 445.

¹⁰Short to J. Cutting, Nov. 15, 1787, *William Short Papers*. Manuscripts Division, Library of Congress. Short was in close communication with Jefferson at this time. Another American on the Continent, Bishop by name, professed to be so apprehensive that the Constitution would be ratified that he frequently dreamed of being a slave. He suspected that the Constitution was "only a Trojan Horse." (Letter to Short, Amiens, Jan. 31, 1788, *William Short Papers*.) The unscrupulous character of the man makes the words of little consequence, except as a picturesque statement, or perhaps parody, of the fears of his correspondent.

¹¹Jan. 31, 1788, *ibid.* Compare with Grayson to Short, Nov. 10, 1787, *Ibid.*

reelection.¹² But elaborate arguments¹³ were brought to bear upon such men. Later, after the acceptance of a bill of rights was assured,¹⁴ they became supporters of the Constitution, although the first ten amendments did not meet their objections in regard to the office of president.

In curious contrast to this antimonarchical opposition to the proposed Constitution stands a group of negotiations, along the frontiers, professedly looking to friendly monarchies for aid and patronage as a remedy for republican neglect. These projects, at one time or another, involved to some noticeable extent Vermont, Kentucky, Tennessee (the last only incidentally), and the settlements northwest of the Ohio river.¹⁵ The most outstanding as well as the most baffling of them all involves James Wilkinson and other leading Kentuckians on the one side, and the officials of His Most Catholic Majesty of Spain on the other.¹⁶

While the Convention at Philadelphia was devoting the mid-summer days of 1787 to the framing of an improved constitution for the United States, James Wilkinson was drafting a memorial¹⁷ to the Spanish Government. Wilkinson's prestige and influence

¹²Mar. 13, 1788, *William Short Papers*.

¹³Such as J. B. Cutting's long and interesting letter of Dec. 13, 1787. Cutting, among other things, declared the American Senate and House had enough power to balance even an hereditary President, and labored long to show that the President's power was small as compared with that of the British King. *Ibid.* See also pamphlet by T. Coxe in support of the Constitution, *An Examination of the Constitution*.

¹⁴See letters by Short, Mar. 16, 1788 and Jan. 28, 1790, by Cutting, Feb. [5] 1790, by Nelson, July 12, 1788 and Dec. 17, 1789, *William Short Papers*; by Benjamin Franklin, Oct. 22, Oct. 24, 1788, *Writings* (Smyth ed.), IX, 665-666, 676. Compare Von Holst, *History of the United States*, I, 65.

¹⁵Georgia seems to have been but slightly involved, if at all. See, however, references by Lieutenant Governor Simcoe (of Canada) to dealings with General Elijah Clark of Georgia. *Report on Canadian Archives, 1891*, Upper Canada, p. 3. See also *American Historical Review*, XXI, 552, where S. F. Bemis points out these relations developed "in the period between [Clarke's] first disappointment over President Washington's Creek treaty of 1790. . . and his relations with Genet in 1793 and trans-Oconee outbreak of 1794."

¹⁶Typical accounts of the Wilkinson Conspiracy and its background are found in H. Marshall, *History of Kentucky*, II, 188-189; I, 270, 282, 313; T. M. Green, *The Spanish Conspiracy*, 120-138, 149ff; R. M. McElroy, *Kentucky in the Nation's History*, 120-121, 131-136, 165 n. 2; N. S. Shaler, *Kentucky*, 98, 101, 137, 139. *The American Historical Review*, IX, 490-506, 749-766, contains some helpful accounts.

¹⁷This first memorial was dated August 21, 1787. *American Historical Review*, IX, 748.

among the frontiersmen¹⁸ entitles his propositions to some consideration. The substance of them was as follows: First, the Spanish king "should receive the inhabitants of the Kentucky region as subjects and take them and their territory under his protection;" and second, "the inhabitants of Kentucky and the other settlements [along the rivers] emptying into the Ohio, who might desire to emigrate to Louisiana should be allowed to settle in that province."¹⁹

The Spanish Council of State, late in the following year,²⁰ formulated a reply which undertook to encourage the immigration plan but not the more radical part of the memorial, since it was deemed "unadvisable" to consider the latter "until the Kentuckians attain the independence from the United States to which they aspire, although they should not be suffered to lose hope that in case of success they would be admitted [as subjects]"²¹ These sentiments in the main pleased Wilkinson, according to his second memorial (September 17, 1789),²² since, as he said, recent changes in the United States²³ made immediate annexation impossible. However, he urged that the Spanish government grant such favorable commercial concessions to the western Americans as to win their friendship and confidence and thus pave the way for an ultimate political connection. In case such a connection should be made Wilkinson stipulated that Kentucky should enjoy "the right of local self-government".²⁴ The far-reaching scope of the plan, geographically considered, is to be inferred from its author's plea that "secret and indirect agencies" should be employed to "accomplish the above-mentioned separation and independence from the United States," and that "such a condition of affairs should not be confined to this region

¹⁸For a concise summary of Wilkinson's activities, questionable and otherwise, see Channing, *The Jeffersonian System*, 156. See also Shaler, *Kentucky*, 98, and especially McElroy, *op. cit.*, 115-116.

¹⁹This summary is the one included in the written decision of the Spanish Council of State. *American Historical Review*, IX, 749.

²⁰November 20, 1788. Approved by the King December 1, 1788. *Ibid.*, IX, 749-750.

²¹*Ibid.*, IX, 749.

²²The second memorial is printed in *ibid.*, IX, 751-764.

²³I. e., the establishment of a new government under the federal constitution of 1787.

²⁴*American Historical Review*, IX, 751.

[Kentucky] alone, but should be set up more or less in all the settlements along the Ohio. . . ."²⁵

It will be recalled that Wilkinson later won acquittal from charges of disloyalty to the United States government. He then described his representations to Spain as wholly insincere and merely means to the end of winning commercial concessions for himself and his fellow Kentuckians.²⁶

If this be true, Wilkinson's earlier assertions that a group of leading westerners of his region were ready to help him bring Kentucky under the Spanish flag (in return for due commercial and other gains)²⁷ must be discounted equally with his own oath of allegiance to Spain.²⁸ On which occasion, if either, Wilkinson spoke the truth, whether or not any economic lure was powerful enough to lead American frontiersmen to bow down to an alien monarchy,²⁹ are the only questions connected with the compli-

²⁵*American Historical Review*, IX, 753. Compare *ibid.*, 754, 755-756. Wilkinson mentions by name the "settlements of Cumberland, Franklin, Holstein [editor's note "Holston?"] New River, Green Briar, Tiger's Valley, Monongahela, Alleghany, and the settlements now forming to the northwest of the Ohio on the rivers Muskingum and Miami." *Ibid.*, IX, 755-756. An especially definite reference to the last two named is found in Wilkinson's proposed list of pensioners (dated September 18, 1789), *ibid.*, 766.

²⁶Shaler, *Kentucky*, 137, 139, gives a concise treatment of the trials.

²⁷Wilkinson listed Harry Innes ("attorney-general and counselor at law; gets 500 dollars a year from the state of Virginia"), Benjamin Sebastian ("lawyer from Virginia"), John Brown ("member of Congress"), Caleb Wallace ("one of our judges; enjoys a thousand dollars a year from the state of Virginia"), and John Fowler ("a man of influence"), with the comment, "These are my confidential friends and support my plan." He added the newly arrived General Lawsen to his list. In addition he named several prominent men under the titles, "These favor separation from the United States and a friendly connection with Spain," and, "These favor separation from Virginia but do not carry their views any further." *American Historical Review*, IX, 765.

²⁸This is an elaborate document dated August 22, 1787. A translation appears in *ibid.*, IX, 496-491.

²⁹The hatred of Great Britain and the enthusiasm for republican France shown in the Genêt incident of 1793 go far to confirm a negative answer. For Genêt's activities in Kentucky see McElroy, *Kentucky in the Nation's History*, 168, 186. The suspicion that the British in Canada encouraged the Indians in hostilities against the American frontier settlements naturally created much hard feeling. See for example, McElroy, *op. cit.*, 177. The antifederalist agitation in Kentucky in 1798 and 1799 should be kept in mind in connection with the general subject under discussion. This movement would suggest that the Kentuckians would

cated story which directly concern a study of monarchical tendencies in the United States. These questions have not been and perhaps never can be answered with absolute conviction. They may, however, be made more intelligible by the reflection that similar ones may be asked about other leaders and other frontier regions of the United States.

Acceptance of the protection of Great Britain was an alternative with the western settlers,³⁰ and that power had made overtures to the Americans,³¹ according to General Wilkinson writing in September, 1789. The British officials, for their part, had reason to believe that there existed in the United States certain monarchical preferences. The "Opinions and Observations of Different Persons Respecting the United States," a secret service report, forwarded to Lord Sydney by the Governor of Canada in October, 1788,³² contained several items of this nature. For instance, "some of the ablest members of the convention" had supported Hamilton's plan which "had in view the establishment of a monarchy, and the placing the crown upon the head of a foreign prince."³³ Again, "The ablest men in the States are at this moment strongly prepossessed in favor of our form of government, and they view the constitution which they are straining every nerve to establish, rather as an experiment, paving the way for a more energetic one, than as a final settlement of the country. . . ."³⁴

As to Loyalists it was remarked that while "some of the most enlightened" had become Federalists, "from the persuasion that the re-union of the empire is impracticable," others were opposing the new constitution in the hope that the resultant distress might "produce what they have never lost sight of" [obviously reunion

never have submitted to monarchical rule. On the "Kentucky Resolutions" see McElroy, *op. cit.*, 211-264.

³⁰*American Historical Review*, IX, 752. Compare 766.

³¹In his second memorial to Spain (September, 1789), Wilkinson declared he had rejected "honors and rewards offered . . . by Great Britain," and referred to flattering offers made to him "by Lord Dorchester through the medium of Colonel Conolly." *Ibid.*, IX, 758.

³²*Report on Canadian Archives, 1890*, 100-106.

³³*Ibid.*, 101.

³⁴*Ibid.*, 101. Compare *ibid.*, 102, "Amongst the number of objections to the new system raised by the advocates for a monarchy,"

with Great Britain or the establishment of a government similar to that of the mother country].³⁵

Several years later the lieutenant governor of Canada made some remarks and recommendations³⁶ which, taken apart from their context and away from their background, would be quite incomprehensible. "Should Congress adopt a Prince of the House of Brunswick for their future President or King, the happiness of the two nations would be interwoven and united—all jealousies removed & the most durable affections cemented that perhaps ever were formed between two Independent Nations."

"This is an object worthy the attention of Great Britain and which many of the most temperate men of the United States have in contemplation. And which many events, if once systematically begun, may hasten & bring to maturity."³⁷

A study of the context suggests several significant facts. In the first place, the writer was much disturbed by the uncompromising spirit of the United States respecting the holding of the posts along the international boundary, the carrying on of trade and the wielding of influence among the Indians in the regions just south of the line.³⁸ In the second place, he was convinced that "until Messrs. Washington, Jefferson and Hamilton [should] have lost the direction of the . . . Confederation" no amicable settlement of these disputes, wholly fair to Great Britain, could be achieved. He declared that the overthrow of these administrators would be "less difficult to effect, by aiming at once to dissolve the Confederacy, than by any other secondary or indirect means."³⁹ In the third place, he credited the "general mass" of people of the United States with a "by no means defective" morality and good sense.⁴⁰ Finally, he urged that some "appeal to popular Reasoning must be made."⁴¹ Simcoe's apparent hope

³⁵On the other hand a "large and respectable proportion" took "little or no part in the general politics of the day," but began, "notwithstanding to rise in the estimation of the country," and were "courted," by both federalists and anti-federalists. *Report on Canadian Archives, 1890*, 102.

³⁶"Lieutenant Governor J. G. Simcoe, Respecting Indians and Posts. Navy Hall, Niagara August 20th, 1792." *Michigan Pioneer and Historical Collections*, XXIV, 459-466.

³⁷*Ibid.*, 466.

³⁸*Ibid.*, 460-461.

³⁹*Ibid.*, 460.

⁴⁰*Ibid.*, 465.

⁴¹*Ibid.*, 466.

for a favorable outcome of such an appeal serves as something of a commentary on the convincing force of the reports on the existence of pro-British sentiment in the States.

The situation in "Kentucké and . . . Major General St. Clair's Government beyond the Ohio" was not overlooked in the "Opinions and Observations" of 1788. Doubt was expressed whether the new Congress would improve upon the old in respect to the assertion of authority over these frontier communities. The British observer referred to a report that some five hundred men, chiefly "officers and soldiers who served in the late continental army," were about to plant a colony west of the Mississippi.⁴² They were "indifferent whether this measure may be agreeable to congress," they neither feared nor respected the Spaniards, and they were "desirious to open a friendly intercourse with our [the Canadian] government by the northern lakes" where they wished to carry on trade. All in all, "There [was] a general growing British interest in the states. . . ."⁴³

A few months later, in the spring of 1789, Lord Dorchester was able to forward to Lord Sydney the "Desultory Reflexions By a Gentleman of Kentucky,"⁴⁴ which contained the following passage: "The politics of the western Country are verging fast to a crisis, and must speedily eventuate in an appeal to the patronage of Spain or Britain. No interruption can be apprehended from Congress, the seditious temper and jarring interests of the Atlantic States forbid general arrangements for the public good, and must involve a degree of imbecility, distraction and capricious policy, which a high toned monarchy can alone remedy;" but "the revolutions and changes necessary to reconcile the people to such a government, must involve much delay. Great Britain ought to prepare for the occasion, and she should employ the interval in forming confidential connexions, with men of enterprise, capacity, and popular influence, resident on western waters."⁴⁵ The mind of the Canadian governor and his correspondent in the home government must have been somewhat prepared for such a proposi-

⁴²I. e., "upon the junction of the Mississippi and Missouri rivers on the northern bank."

⁴³*Report on Canadian Archives, 1890*, 103.

⁴⁴The author is identified as General Wilkinson by T. M. Green in his book, *The Spanish Conspiracy*, 297-298.

⁴⁵*Report on Canadian Archives, 1890*, 107-108.

tion by the observation, included in the list of reports for the preceding year, that "a republican government does not seem calculated for the genius and disposition of the people in the states."⁴⁶

The "Muskingum Settlements"⁴⁷ were reported⁴⁸ in 1790 to be "composed of disconnected" [sic]⁴⁹ Continental Soldiers and officers who were attached to the United States by no other tie but personal regard for the President,⁵⁰ considering themselves as sacrificed by Congress and defrauded even in the sale of the lands they occupy."⁵¹ This situation was suggested as the cause of their "extreme tenderness towards the British Government" in certain matters then at issue.⁵² The "principal Body of People of Kentuckee" were "Friends of Great Britain," according to Lieutenant Governor Simcoe writing in 1791.⁵³

A forceful denial of the probability of the triumph of separatism, stated by a competent observer who admitted such an event to be a possibility, is found in a letter from "General Rufus Putnam to Mr. Fisher Ames,"⁵⁴ of Massachusetts. The Ohio Company promoters, in seeking congressional grants in their behalf, had originally made much of the devotion to the federal union which, they said, characterized the would-be settlers of the northwest.⁵⁵ It is significant that Putnam, in attempting to prove the

⁴⁶*Report on Canadian Archives, 1890, 103.*

⁴⁷I. e., Marietta and neighboring regions.

⁴⁸In an "Extract from a Private Letter from Detroit," signed "D," and indorsed "In Lord Dorchester to Mr. Grenville No. 74 of the 10th Novr. 1790."

⁴⁹Discontented?

⁵⁰One important reason for this regard was undoubtedly Washington's attitude towards the Ohio Company, an attitude of interest and encouragement. See W. P. and J. P. Cutler, *Life of Manasseh Cutler*, I, 144, 172-174.

⁵¹This statement is introduced with the words "It can do no harm to say that the Muskingum Settlements. . . ."

⁵²I. e., in regard to a professed belief that British traders and not British officials were the source of the military supplies to Indians hostile to the United States. *Michigan Pioneer and Historical Collections*, XXIV, 105.

⁵³Lieutenant Governor Simcoe to Henry Dundas, August 26, 1791. The reason cited was the difficulty of trading to the southward, even after Spanish concessions, because of the hostility of the Indians in that quarter. *Ibid.*, XXIV, 325.

⁵⁴This letter was written on or before December 20, 1789, as Putnam refers to it in a letter of that date. He refrained from sending it to Ames until it should have been inspected by Cutler. Cutler, *op. cit.*, I, 450, and II, 373-383.

⁵⁵*Ibid.*, I, 121, 134, 147, and especially 304.

improbability of separatism, does not mention this devotion but instead rests his argument on the assertion "that it is and always will be the interest of the Western country to remain a part of the United States."⁵⁶ With a few simple but impressive arguments he shows that the Canadian government "can never suit [the] genius, nor be for [the] interest" of the westerners, and that "the advantage to be derived from the Spanish Government" is not "much better."⁵⁷ He does, however, issue the following warning: "I do not deny but what such circumstances may exist as shall not only make it the wish of some, but of all, the inhabitants of that country to be separated from the old States, . . . should Congress give up her claim to the navigation of the Mississippi or cede it to the Spaniards, I believe the people in the Western quarter would separate themselves from the United States very soon. Such measure, I have no doubt, would excite so much rage and dissatisfaction that the people would sooner put themselves under the despotic government of Spain than remain the indented servants of Congress; or should Congress by any means fail to give the inhabitants . . . such protection as their present infant state requires . . . ; in that case such events may take place as will oblige the inhabitants of that country to put themselves under the protection of Great Britain or Spain."⁵⁸ He also professes to believe that ambitious men, more interested in "the emoluments of office than the public good" are in this region as everywhere and "may influence people to pursue, as the object of their happiness, measures which will end in their ruin."⁵⁹

Before accepting these assertions at their face value the circumstances under which they were made must be called to mind. In the first place, no man held the success of the Ohio Company more dear than did Rufus Putnam.⁶⁰ In the second place, the assertions were made at a time when the project was handicapped by the delay in closing the land grant deal with Congress,⁶¹ the inadequacy of military protection against the Indians,⁶² and, in

⁵⁶Cutler, *op. cit.*, II, 377.

⁵⁷*Ibid.*, II, 375.

⁵⁸*Ibid.*, II, 377.

⁵⁹*Ibid.*, II, 377.

⁶⁰His interest may be traced, in good part, by following the references to him in the index to *ibid.*, II, 488.

⁶¹See *ibid.*, I, 445, 447, 449, 450.

⁶²See, for example, *ibid.*, I, 447-448.

common with their more southern neighbors, uncertainty as to the opening of the Mississippi to their trade.⁶³ Finally, the assertions were made in a letter, known to have been an object of special care to its author, and addressed to one of the most influential statesmen of a district reputed with some reason to entertain a degree of hostility towards the development of the West. Under such circumstances Putnam could hardly be expected entirely to discredit reports of such strategic worth in a struggle for measures favorable to the western frontier settlements. On the other hand, Washington himself, a few years earlier, had written, "The western states (I speak now from my own observation) stand, as it were, upon a pivot. The touch of a feather would turn them either way."⁶⁴

It has been pointed out that certain leaders of the Ohio Company such as Tupper and Varnum, could conceive of the establishment of a monarchical government in the United States.⁶⁵ Nicola, whose monarchical propositions to Washington have been discussed in an earlier chapter, associated with these propositions a plan for a military colony in the West,⁶⁶ not unlike that of Pickering's which was a forerunner of the Ohio Company.⁶⁷ The present writer has been unable to establish any definite relationship between Nathaniel Gorham, suspected monarchist, and the Ohio group, but like them he was interested in vast land projects along the frontier.⁶⁸ He quite obviously believed that separation would prevail in the West for in the Convention he said, "It is not to be supposed that the Govt will last long enough" to make the numbers of representatives excessive, for "Can it be supposed that this vast Country including the Western territory will 150 years hence remain one nation?"⁶⁹ Through his activities in state and national politics he must have come into close contact with some of the group. The evidence suggests that some general identity of interest appears among persons supposed to have con-

⁶³Cutler, *op. cit.*, II, 374.

⁶⁴Washington to Governor Harrison of Virginia, October, 1784, *ibid.*, II, 388.

⁶⁵See above, pages 73 and 47.

⁶⁶See above, page 44.

⁶⁷For Pickering's plan, see Cutler, *op. cit.*, I, 156-159.

⁶⁸See above, page 67.

⁶⁹Quoted above, page 69.

sidered monarchical institutions feasible for the United States.⁷⁰ Incidentally, the possibilities of such a suggestion are tremendous for it points to the probability that many other like-minded persons were not averse to such institutions even though the occasion did not arise for an expression of their opinions on the subject.

Other evidence is not lacking to indicate that separatism was a well recognized tendency at the time.⁷¹ The evidence suggesting that this spirit, in the West, involved a tolerance of monarchical institutions as a means to an end, though not as an end in themselves, speaks for itself. One further episode deserves attention in this connection, namely, the final negotiations between the Vermont separatists and Great Britain.

Vermont, by virtue of her unique position of practical independence,⁷² was able to negotiate with the British in a more nearly official manner than could the other districts. Her motives for conducting such negotiations were similar to those of the West, namely, a desire for a convenient and unobstructed channel for her trade, and a distrust of Congress as a champion of her interests. It has been said that "a strong party in the Sovereign State of Vermont was against joining the Union, and favored an alliance with Great Britain, or even return to British rule."⁷³

No year since the peace of 1783 had passed without negotiations between Vermonters and British officials.⁷⁴ The majority concerned petitions for a commercial treaty or other commercial concessions but some went much farther. Thus certain leaders of the Green Mountain State had, at the close of the War, declared themselves in favor of annexation by Canada.

⁷⁰See above, page 74.

⁷¹Washington had proceeded to urge the construction of thoroughfares for trade between coast and interior regions. In this connection it should be remembered that Washington was financially interested in western land projects.

⁷²On this position see "Vermont as a Sovereign and Independent State, 1783 to 1791," *Vermont Historical Society Collections*, II, 395-498, as well as the treatment of this period in any history of the state.

⁷³*The American Historical Review*, XXI, 547-560, prints an article on this theme by S. F. Bemis, under the title "Relations between the Vermont Separatists and Great Britain, 1789-1791." The documents upon which the article is based are described as a selection from "The Colonial Office Papers in the British Public Record Office" transcripts of most of which "are in the Canadian Archives at Ottawa, series Q." The author of the article consulted documents in both of these repositories. *Ibid.*, 548.

⁷⁴Compare *ibid.*, XXI, 548-550.

Ethan Allen, writing in 1788 a memorial full of defiance towards the United States, told Lord Dorchester that "the leading men in Vermont [were] not sentimentally attached to a republican form of government."⁷⁵ They were, however, "determined to maintain their present mode of it, till they [could] have a better, and expect to be able to do it, at least, so long as the United States will be able to maintain theirs, or until they can on principles of mutual interest and advantage return to the British government, without war or annoyance from the United States."⁷⁶

Despite these protestations of attachment, the Vermonters did not receive the concessions which Ethan Allen sought.⁷⁷ Hence another of the Allen brothers journeyed to England in the interest of the petition. In introducing Levi Allen⁷⁸ a curious and perhaps significant coincidence between his circumstances and those of James Wilkinson is worth noting. Wilkinson in his dealings with Spain had made much of the contention that concessions enabling him, individually, to convey goods through Spanish territory⁷⁹ and to sell them at low prices to the Kentuckians would be a powerful agent in developing a pro-Spanish political senti-

⁷⁵Allen to Lord Dorchester, July 16, 1788. Quoted in *American Historical Review*, XXI, 550. Calendared with "liberal quotations," in *Report on Canadian Archives*, 1890, State Papers, 210-211.

Bemis calls attention to the interesting fact that "this was presented to the governor of Canada within a few months from the time when Wilkinson forwarded a similar communication to the Spanish governor at New Orleans." *American Historical Review*, XXI, 550.

⁷⁶Allen goes so far as to say that "should the United States attempt a conquest of them" [the Vermonters], he presumes they would yield their independence and "become a province of Great Britain" just as they would "readily" have done so in "the time of General Haldimand's command, could Great Britain have afforded Vermont protection." *Report on Canadian Archives*, 1890, 211.

⁷⁷Several important concessions were, however, made from time to time. (See Bemis, article cited, *American Historical Review*, XXI, 549, also letter from Simcoe to Dundas, August 2, 1791, *Report on Canadian Archives*, 1889, 53.) But a commercial treaty, as desired by the Vermont petitioners, was declared impossible.

⁷⁸Levi Allen received a pension as a loyalist according to Lieutenant Governor Simcoe; *Report on Canadian Archives*, 1889, 53. For activities of a third brother, Ira, see above, page 36. For an example of the united efforts of the Allens see *ibid.*, 1890, 210, (letter of July 16, 1788). Compare "The Allen brothers, Ethan, Ira, and Levi, were the most active and versatile of the separatist party. . . ." Bemis, *op. cit.*, *American Historical Review*, XXI, 548.

⁷⁹New Orleans and vicinity.

ment in that region.⁸⁰ Similarly Allen contended for such concessions as would enable him to bring English goods through Canada for sale at attractive prices in Vermont.⁸¹ Whether Allen and Wilkinson were really seeking to effect political arrangements for the general welfare, or whether their declared object was merely a cloak for their personal ambitions is a legitimate but probably unanswerable question. Whatever the answer Allen's methods acquire added interest when compared with those of the Kentuckian. On the whole the former's assertions were the bolder and more sweeping of the two. Thus Allen solemnly assured a British secretary of state that during the Revolutionary War "at least three fourths" of the inhabitants of Vermont were loyal to the mother country and that "those of the Inhabitants, who in the beginning of the frenzy . . . even for a time opposed to His Majesty's Government, soon saw their error and would have been happy to have . . . returned to their Allegiance long before the end of the war. . . ."⁸² They were, according to Allen, still desirous of making this move but for "doubt with respect to its practicability." The fact that the writer claimed, even though without good reason,⁸³ to be "authorized by Commission under the Great Seal of Vermont, pursuant to an Act of the General Assembly thereof, to negotiate a commercial and Friendly Intercourse between Vermont and his Majesty's Dominions" must have given his words some weight.⁸⁴

In one of his last communications on the subject, Levi Allen declared to Henry Dundas, home secretary at the time, that the "Principal men of Governor Chittenden and Allen's Party"

⁸⁰*American Historical Review*, IX, 763.

⁸¹See especially the letter from Levi Allen to Lieutenant Governor Simcoe, November 19, 1791, *Report on Canadian Archives*, 1889, 56. A very similar letter, dated November 27, 1791, is printed in the *American Historical Review*, XXI, 559-560.

⁸²Memorial of Levi Allen, May 4, 1789, *American Historical Review*, XXI, 553. Allen even declared that due to Vermont's natural and advantageous commercial connection with Canada (dependent in turn on the "locality of Vermont, as well as the Disposition of its Inhabitants") the Vermonters had "earnestly hoped to have been incorporated as an appendage to the Province of Quebec, but those hopes were defeated by the boundary line of the United States as settled by the late Peace." *Ibid.*, 553-554.

⁸³This point is treated in a footnote, *ibid.*, XXI, 553.

⁸⁴See Lieutenant Governor Simcoe's reference to this commission, *Report on Canadian Archives*, 1889, 53.

had told him "to assure the British Court that Vermont was from local situation as well as from inclination firmly attached to them, and that whenever Vermont should find it necessary to join Britain or join Congress, they would positively join the former."⁸⁵

For some time, until the British government had made sure that the United States would not break the peace in order to secure Detroit and the other border posts, that government, involved in the Nootka Sound controversy, found it worth its while to attempt to develop sentiment favorable to itself in Vermont, as also in Kentucky.⁸⁶ The governor of Upper Canada, indeed, continued to urge the extreme strategic importance of these states for some years longer.⁸⁷ But Vermont's acceptance of admittance into the Union, in 1791,⁸⁸ forced Levi Allen to admit the futility of further negotiations between his state and Great Britain.⁸⁹ Lieutenant Governor Simcoe's optimism could overlook even this event and forsee the development under proper tutelage, of a British interest in Vermont and Kentucky, as opposed to the rest of the Union.⁹⁰ Still later Simcoe reported that all of the people of Vermont⁹¹ with whom he had spoken agreed that Vermont would "support a neutrality" in case of war between the United States and Great Britain.⁹² A statement, apparently of the same period, preserved

⁸⁶*American Historical Review*, XXI, 555. Similar declarations were made by Vermonters in 1794 according to Simcoe and Jarvis. *Report on Canadian Archives*, 1889, 57, 58.

⁸⁸Concisely treated, with footnote references, in the article by Bemis, *American Historical Review*, XXI, 551. Simcoe was especially solicitous about this matter as appears in his letter to Mr. Dundas, August 2, 1791. *Report on Canadian Archives*, 1889, 54-55.

⁸⁷See Simcoe's letter to Mr. Dundas, August 5, 1794, *ibid.*, 57-58.

⁸⁸For expressions of Levi Allen's opposition to such action by Vermont see his letters to Dundas, August 9th and November 27th, 1791, *American Historical Review*, XXI, 557 and 560 respectively. The letter of November 27th contains a curious passage in which Allen ascribes Vermont's regrettable mistake in this respect to the death, absence, or defection of her leaders. *Ibid.*, 560, but more forcefully given in *Report on Canadian Archives*, 1889, 56.

⁸⁹*American Historical Review*, XXI, 560.

⁹⁰*Report on Canadian Archives*, 1889, 54-55.

⁹¹He had described them earlier in his letter as "some very respectable people of Vermont." *Ibid.*, 57.

⁹²*Ibid.*, 57.

in the Canadian Archives,⁹³ quotes Governor Chittenden as saying "that if Congress takes a part in the War in favor of France I am sure Vermont will never accede to it but will make the best bargain they can for themselves . . ." The Vermont executive was further quoted as follows; ". . . glve [give] my compliments to Governor Simcoe, and tell him that the Governor and Council of Vermont are of the same opinion that they were in the year 1781 when Colonel Fay was . . . negotiating a union with Canada &c. &c. when the news of Lord Cornwallis's misfortune reached Vermont, which suspended the negotiation and finally put an end to it. That Vermont has nothing to gain by entering into a combination to defend the Sea Coasts, on the contrary everything to lose—their Commerce (through Canada) ruined, their whole Country open to inroads of British Indians, &c." ⁹⁴

The Vermont episode may be said to close the story of separatist movements in relation to monarchical tendencies. The Blount Conspiracy, so-called, of the middle nineties, although involving a military alliance between the western frontiersmen and the British⁹⁵ (against the Spanish possessions in the southwest), did not go to the length of political union as suggested in the Vermont and Kentucky negotiations.

The leading features of these embryonic separatist movements⁹⁶ can be stated quite definitely despite the seeming impossibility of handing down a final decision on the motives and intentions which actuated them. These features may be summarized as follows: First and foremost, the avowed ascendancy of economic interests over political preferences; second, a professed willingness for close association and even allegiance to a monarchical government to effect the aforesaid economic ends; third, the absence of any desire to *create* monarchical institutions either for

⁹³This is preserved in the same volume (Archives, series Q, vol. 281-1), and on a page close to Simcoe's letter to Dundas of August 5, 1794, entitled "Statement by Mr. Jarvis," and signed with Simcoe's initials, "J. G. S." *Report on Canadian Archives, 1889*, 58.

⁹⁴*Ibid.*, 58.

⁹⁵See concise statement by F. J. Turner in the *American Historical Review*, X, 273-275, also 574-606.

⁹⁶This summary applies to the Vermont negotiations of 1780-1783, discussed above, pages 35 to 39, as well as to the various episodes considered in the pages immediately preceding the summary.

particular areas or for the United States as a whole; fourth, the restriction of the expression of what may be called monarchical leanings to a few "leading men" and the absence of any such expression on the part of the people as a whole.

No definite projects for the erection of a monarchy by the Federalists during the twelve years of their control have ever been discovered. A special student of New England federalism (Dr. Samuel Eliot Morison), writes, "I have never seen any evidence of a conscious trend to monarchy on the part of the Federalists even in their private correspondence, after 1789. . . . After the ratification of the Constitution the Federalists devoted their energies to strengthening and energizing republican government. They realized that a monarchy in the United States would be an absurdity, and that the best chance of preserving the institutions that they believed in was to support the Federal and the State governments."⁹⁷ Yet these were the very years in which most of the "monarchical" accusations were made. The author of the "Life of John Marshall" has noted that in gathering and adjusting material for that work he was "profoundly impressed by what seemed to be the honest belief of many apparently sensible men that there was a monarchical movement" on foot. Again he says, "Undoubtedly there was a general fear that certain men were plotting to establish a monarchy or at least that they preferred a monarchy to a republic, but this fear had been planted by politicians, sincere and insincere, in the minds of the people, the masses of whom at that time were singularly uninformed, suspicious and isolated."⁹⁸

There seems to have been general agreement in 1789 that Washington had no thought of personal aggrandizement in accepting the presidential chair. When the organizers of the new government showed some inclination to make it a presidential throne⁹⁹ the opponents of royal trappings found in Vice President

⁹⁷In reply to questions by the present writer, Dr. Morison also writes, "I admit that there was more or less loose talk in high Federalist society about the superiority of a monarchy over a republic and the likelihood that the logic of events would lead to monarchy, if not to military despotism. But this same sort of talk has been going on in society to this day." Compare footnote 100 above, page 98.

⁹⁸Mr. Albert J. Beveridge in a letter to the writer.

⁹⁹See account of Senate discussion, May 7, 1789, W. Maclay, *Journal* (E. S. Maclay ed.), 21. On titles see Madison, *Writings* (Hunt ed.), V, 369-370 n.; *Massachusetts Historical Society Collections*, 5th ser., IV, 436-439; 6th. ser., IV, 432;

Adams a closer target for reproach than the President.¹⁰⁰ As for the ceremony with which Washington surrounded himself, it was probably excused by most of the persons who would otherwise have opposed it, on the grounds that Washington's motives were pure and his situation novel and puzzling.¹⁰¹ A member of the first Senate remarked of Washington, in May, 1789, that "Whether he will be able to retain his usual popularity, time must determine, but I am very much mistaken if he ever justly forfeits it."¹⁰²

By 1793 attacks upon Washington by the opposition press were becoming articulate. These attacks were closely connected with ultra-democratic enthusiasm for the French Revolution, and especially for the antimonarchical stage it had attained by the time of the execution of the King. "Hundreds of examples might be given showing the same supersensitive, silly, trivial, maudlin state of mind prevailing among a large section of the American public as prevailed in France, and which was derived largely from France. . . . Evidences of royalty were attacked. A medallion of George III on a Philadelphia church was ordered removed by the Democrats, because to their knowledge it had a tendency to keep young and virtuous men from attending public worship."¹⁰³ On the other hand, a good deal of respect is due to the obvious sincerity of many Americans who believed that a failure to assist the French revolutionists was nothing short of flagrant ingratitude in view of French aid to the American revolutionary cause. Washington's proclamation of neutrality or rather, discontent with it, formed a rallying point for the opposition party which was gradually forming in the United States. Its members were in no mood to be reminded that the royal government of France had been the source of French aid to the Americans and the signatory of the treaty of alliance. They went so far as to accuse their President

Massachusetts Historical Society Proceedings, 2d ser., XV, 129, 132; *Wisconsin Historical Publications*, LXIII, 97.

¹⁰⁰See for example, Maclay, *op. cit.*, 10-14. These pages afford an excellent illustration of the significance attached to monarchical formulae.

¹⁰¹*Ibid.*, 15.

¹⁰²Paine Wingate, of New Hampshire, in a letter to Jeremy Belknap, May 12, 1789. *Massachusetts Historical Society Collections*, 6th ser., IV, 432.

¹⁰³These lines are quoted from a vivid, though perhaps too unsympathetic, portrayal of the situation in C. D. Hazen's article "The French Revolution as Seen by the Americans of the Eighteenth Century" in *American Historical Association Report*, 1895, 455-466.

of cherishing kingly ambitions in keeping with his anti-republican stand on the French situation. These accusations were so persistent and irritating that Washington is said finally to have exclaimed "that he had rather be on his farm than to be made *emperor of the world* and yet that they were charging him with wanting to be a king."¹⁰⁴ The imprudent behavior of the minister Genêt, in appealing from the President to the people, however, influenced many "French enthusiasts" to once more support President Washington.¹⁰⁵

The administration's show of force against the so-called "Whiskey Insurrection" in western Pennsylvania, in the fall of 1794, renewed hostility to the President. As the Federalists expressed it "every measure of THE PRESIDENT'S" had been declared "the most abominable stretch of power."¹⁰⁶ What especially turned the opposition party against Washington was his signing of the Jay treaty with England,¹⁰⁷ a treaty, according to the "Aurora," which would have annihilated "every republican principle in the government, had not the . . . spirited exertions of our patriotic representatives" prevented.¹⁰⁸ Adet reported to the French Committee of Public Safety that Washington was ruled not by patriotism but ambition, and associated the President with monarchism.¹⁰⁹ The "Spurious Letters" of Washington published as though authentic, were used at the time of the treaty agitation, to convince the public that Washington, even in the Revolution, had cherished the British monarchical government.¹¹⁰ The "Aurora," early in 1797, printed an article by "A

¹⁰⁴"The Anas," Jefferson, *Writings* (Ford ed.), I, 254.

¹⁰⁶Compare Bassett, *Short History of the United States*, 266-267.

¹⁰⁶*Gazette of the United States*, Sept. 6, 1794, quoting from the *Columbian Centinel*.

¹⁰⁷For evidences of deep interest in European affairs see, for example, *American Historical Association Report*, 1896, I, 795-796; Jay, *Correspondence*, IV, 198-203. See also above, n. 22.

¹⁰⁸*Aurora*, Sept. 29, 1797, p. 2. Compare J. Jones to Madison, early in 1795, *Massachusetts Historical Society Proceedings*, 2d. ser., XV, 147; also letters by Jones, Dec. 21, 1795, Feb. 17 and Apr. 26, 1796, *ibid.*, 153, 155, 156; letters by Henry Tazewell, Jan. 24, Apr. 4, and Dec. 18, 1796, Tazewell, *Twelve Letters*, Manuscripts Division, Library of Congress.

¹⁰⁹Sept. 2, 1795, *American Historical Association Report*, 1903, II, 776-777. See also letter from Adet to the French Minister of Foreign Relations, *ibid.*, 915-916.

¹¹⁰W. C. Ford, *Spurious Letters of Washington*.

native of Pennsylvania" who said, "I should have expected that we had not so soon arrived at the threshold of monarchy, that any one would assert that the Chief Magistrate is not amenable to the people for his conduct." The article justified an "appeal to the people" which the French representative Adet had just made public.¹¹¹ The issues of this paper, throughout the month, fairly bristled with insinuations of Washington's monarchism.¹¹² Even after Washington's retirement to private life the French Consul General reported that the Federalists wished to make Washington king.¹¹³

During the first part of the administration of his successor Washington was exempt from monarchical charges. The "Aurora" even praised him, indirectly, for having refused "the diadem offered by his veteran army."¹¹⁴ But Washington's appointment as head of the army raised against France in 1798 once more brought him into ill repute with the opposition party. In the campaign literature of 1800 Washington was dubbed the "monarch of Mount-Vernon,"¹¹⁵ and denounced for encouraging in America an imitation of royal birthday celebrations, royal levees, and royal speeches from the throne.¹¹⁶

The final verdict by the opposition party as to the monarchism of Washington can be best expressed in Jefferson's words, "I am convinced he is more deeply seated in the love and gratitude of the republicans, than in the Pharisaical homage of the federal

¹¹¹Jan. 5, 1797, p. 2.

¹¹²Satirizing the praise accorded him for his revolutionary services, denouncing his support of "hereditary succession" in upholding a definite candidate for the next administration, challenging him to deny that he held the views set forth in the "Letters", charging him (indirectly) with having exploited his popularity, and scoffing at his "Farewell Address." See issues for Jan. 6, p. 2; Jan. 7, p. 2; Jan. 9, p. 3; Jan. 23, p. 3; Jan. 26, p. 3.

¹¹³After mentioning the agreement of England and the Federalists that the United States should declare war on France, Adet remarks, "Le but de toutes leurs menées est d'avoir un roi, mais l'un voudroit que ce fût un des fils du roi d'Angleterre, et l'autre Washington." Létombe to French Minister of Foreign Relations, June 18, 1797, *American Historical Association Report, 1903*, II, 1038.

¹¹⁴There is nothing to show that the Nicola propositions were known, as a knowledge of the "Newburgh Address" would sufficiently account for the above reference. See *Aurora*, Jan. 29, 1800, p. 2.

¹¹⁵J. T. Callender, *Prospect before us*, 18.

¹¹⁶T. Coxe, *Strictures upon the letter imputed to Mr. Jefferson, addressed to Mr. Mazzei*, 4-5.

monarchists. For he was no monarchist from preference of his judgment. . . . He has often declared to me that he considered our new constitution as an experiment on the practicability of republican government . . . that he was determined the experiment should have a fair trial, and would lose the last drop of his blood in support of it."¹¹⁷

Monarchical charges were brought with less restraint and more reason against Washington's successor as President; with less restraint because Adams did not enjoy the nation wide popularity of the military hero,¹¹⁸ and with more reason because of certain of his own actions and utterances. Despite his early reputation as an ardent republican¹¹⁹ even before the adoption of the Constitution Adams had been suspected of monarchical preferences, due to his "Defence of the American Constitutions."¹²⁰ Adams had "thrown together some hasty speculations upon . . . government" under the stress of his alarm over "the commotions in New England" at the time of the Shays Rebellion.¹²¹ There were those who suspected that "under ye mask of attacking Mr. Turgot" who had criticized the American form of government, Mr. Adams "notwithstanding now and then a saving clause" was "insidiously attempting . . . to overturn" the American constitutions.¹²² In Washington's administration Adams had been satirized as "The Dangerous Vice."¹²³ His advocacy of ceremonial in the new government was mercilessly ridiculed by some as of a monarchical character.¹²⁴ In his advice to Washington on the matter, in May, 1789, Adams declared that the presidency "by its legal authority, defined in the constitution, has no equal in the world, excepting those only which are

¹¹⁷Letter of Jan. 2, 1814, Jefferson, *Writings* (Ford ed.), IX, 449-450.

¹¹⁸Compare Adet to the French Minister of Foreign Relations, Dec. 15, 1796, *American Historical Association Report*, 1903, II, 978-979.

¹¹⁹See above, pages 23, and 34.

¹²⁰See above, p. 87.

¹²¹See his own statement in a letter of Jan. 27, 1797, *Works*, IX, 551.

¹²²The Reverend James Madison to his son, June 11, 1787, *Massachusetts Historical Society Proceedings*, 2d ser., XVII, 465, 467. Compare letters between W. Nelson and W. Short, July 7 and Sept. 17, 1787; March 9, 13, 1788, *Short Papers*, Manuscripts Division, Library of Congress.

¹²³See *Massachusetts Historical Society Proceedings*, XI, 18, for an example of such a reference.

¹²⁴Maclay, *Journal*, 10-14, 155, is probably the best example.

held by crowned heads; nor is the royal authority in all cases to be compared to it."¹²⁵ In a series of letters to Roger Sherman, in July, 1789, Adams proved, to his own satisfaction, that the United States was actually a "monarchical republic, or . . . a limited monarchy."¹²⁶ Yet in 1790 he was cautioning a correspondent against the "fraudulent use of the words *monarchy* and *republic*," and declaring himself "a mortal and irreconcilable enemy to monarchy."¹²⁷ His opposition to the French Revolution especially as expressed in his "Discourses on Davila" was "urged as . . . proof, that he was an advocate for monarchy, and laboring to introduce a hereditary president in America."¹²⁸ After the outbreak of the war between England and France Adam's eulogies of the British constitution were more distasteful than ever to those of his political opponents who "admired everything French and hated everything English." By 1796, M. Adet was reporting that the "Senators and John Adams at their head," were declaring that a monarchy was the only government suitable to any people.¹²⁹ At almost the same time Jefferson wrote his much discussed "Letter to Mazzei" in which he said that "an Anglican monarchical, & aristocratical party has sprung up whose avowed object is to draw over us the substance, as they have already done the forms, of the British government. The main body of our citizens . . . remain true to their republican principles . . . Against us are the Executive, the Judiciary, two out of three branches of the legislature . . ."¹³⁰ After the election of Adams, but before his inauguration, the issue was again discussed. Representative Robert G. Harper quoted from the "Defence" itself to prove Adams was no monarchist.¹³¹ In op-

¹²⁵ Adams, *Works*, VIII, 493.

¹²⁶ *Ibid.*, VI, 430.

¹²⁷ Letter to Benjamin Rush, Apr. 18, 1790, Adams, *Works*, IX, 566. Compare letter to Jefferson, July 29, 1791, *ibid.*, VIII, 507.

¹²⁸ See "Discourses on Davila," *ibid.*, VI, 225-403. Note also letters of 1792, in Madison, *Writings* (Hunt ed.), VI, 50, n., and *Massachusetts Historical Society Proceedings*, 2d ser., XV, 140.

¹²⁹ In the original French, this reads, ". . . le seul Gouvernement convenable, à tous les Peuples." Adet to the Minister of Foreign Relations, May 3, 1796, *American Historical Association Report*, 1903, II, 901. Compare letters of Sept. 24 and Dec. 15, 1796, *ibid.*, 949, 979.

¹³⁰ Jefferson to P. Mazzei, April 24, 1796, *Writings* (Ford ed.), VII, 75-76.

¹³¹ Letter to his constituents, Jan. 5, 1797, *American Historical Association Report*, 1913, II, 26.

position quarters the suggestion was made that once in office as president he would perhaps be guided by the constitution and not attempt to put his monarchical theories into effect.¹³²

In his inaugural address Adams did not overlook suspicions of his monarchical preferences for he was careful to state his "preference upon principle of a free republican government, formed upon long and serious reflection, after a diligent and impartial inquiry after truth," and avowed "a conscientious determination" to support the Constitution "until it shall be altered by the judgments and the wishes of the people, expressed in the mode prescribed in it."¹³³ Nevertheless, the charges against him were continued throughout the year.¹³⁴

Party feeling was at an especially high pitch in 1798 even before the passage of the alien, sedition, and other acts of defence. The "Aurora," February twenty-seventh of that year, said that the President's dictatorial attitude towards Congress in respect to war or peace with France was leading "not merely to monarchy, but despotism."¹³⁵ In March an article appeared proving the "Presidential supremacy over a King of England," urging that the President's powers of patronage exceeded those of the latter dignitary.¹³⁶ The "Aurora" had concluded by the end of the month that the "royal faction" was about to get its war with France unless the people should rouse themselves soon.¹³⁷ James Madison observed of the President's message that it was "only a further development to the public, of the violent passions, & heretical politics, which have been long privately known to govern him."¹³⁸ The disclosure by Adams of the X. Y. Z. correspondence did not unite all persons to the administration. Henry Tazewell declared that the proofs were "innumerable and incontrovertible" that the "great political object of our own Govt." had "from the beginning been to assimilate it to that of Great Britain." He named

¹³²See the *Aurora*, Feb. 3, 1797, p. 3; J. Jones to Madison, Jan. 29 and Feb. 5, 1797, *Massachusetts Historical Society Proceedings*, 2d ser., XV, 159, 160.

¹³³Adams, *Works*, IX, 109.

¹³⁴See the *Aurora*, July 8, p. 2; July 14, p. 3; Aug. 14, p. 2; Sept. 27, p. 3; Sept. 29, p. 2; also *American Historical Association Report*, 1903, II, 1038, 1090. See Appendix B, I, 1, "Cobbett."

¹³⁵*Aurora*, Feb. 27, 1798, p. 2.

¹³⁶*Ibid.*, Mar. 5, 1798, p. 3.

¹³⁷*Ibid.*, Mar. 30, 1798, p. 3.

¹³⁸Madison, *Writings* (Hunt ed.), VI, 312. (Letter to Jefferson, Apr. 2, 1798.)

the "laws, and public acts of the Government" as the proofs he had in mind. He declared that "every measure of defence" against France was "made the means of increasing the power of the Executive."¹³⁹ Livingston's attack upon the Alien Bill as making the President a despot was published with the declaration that a code was being advocated "compared to which the ordeal is wise, & the trial by battle . . . merciful and just."¹⁴⁰ "Richard Frugal" wrote to Mr. Bache,¹⁴¹ in July, "Immediately . . . on the passing of the alien bill—Egad says I, I have found use for the bastile key and . . . for . . . the bastile itself . . . and the famous Lettres de Cachet."¹⁴² Other accounts attacked the President or deplored the "system of terror that has been countenanced by our administration."¹⁴³ The most formal protest was voiced in the Virginia Resolutions of 1798 which declared that the spirit "manifested by the federal government to enlarge its powers by forced constructions" of the Constitution would inevitably result in transforming "the present republican system of the United States into an absolute or, at best, a mixed monarchy."¹⁴⁴ In 1799 the "tyrannical and degrading effects"¹⁴⁵ of the Sedition Act were harped upon, monarchical developments were described as inevitable among any people,¹⁴⁶ and the ceremonious attendance of the President at the theatre deplored as meant "to familiarise us with the forms of monarchy."¹⁴⁷ The "Federalists" were defined as men who for the most part were beginning "to think a limited monarchy more tolerable than was heretofore supposed."¹⁴⁸ A satirical article, really amusing from its very thoroughness, described the procedure at a Federalist Independence Day celebration as including an "ingenious, learned, and eloquent harrangue upon the blessings of monarchical forms of governments, and the

¹³⁹May 9, 1798, H. Tazewell, *Twelve Letters*. Manuscripts Division, Library of Congress.

¹⁴⁰*Aurora*, July 2, 1798, p. 2.

¹⁴¹Editor of the *Aurora*.

¹⁴²*Aurora*, July 3, 1798, p. 2.

¹⁴³*Ibid.*, July 4, 1798, p. 2; and July 7, p. 3; July 12, p. 3; July 25, p. 2; Aug. 27, p. 2.

¹⁴⁴Elliot, *Debates*, IV, 528.

¹⁴⁵*Aurora*, Feb. 21, 1799, p. 3.

¹⁴⁶*Ibid.*, Feb. 7, 1799, p. 2.

¹⁴⁷*Ibid.*, Feb. 22, 1799; p. 3.

¹⁴⁸*Ibid.*, July 4, 1799, p. 3.

advantages of standing armies." The toast to "The Day" was accompanied by "3 laughs—a groan," while that to "The King of England" was followed by "16 cheers, 16 guns and 9 bumpers round."¹⁴⁹ English immigrants were declared to secretly favor the placing of a British prince on a throne in the United States, by means of the British army and its allies, once they had reduced the regicides of France.¹⁵⁰

Even the President's break with the extremists of his own party, by making peace with France, did not ward off monarchical charges in the presidential election of 1800. An account of his alleged declaration that he had long been contending against the monarchists included a statement that at the same time he had said "that we shall never have liberty or happiness in this country, until our first Magistrate is hereditary."¹⁵¹ An absurd tale was circulated that Adams was to "unite his family with the Royal House of Great Britain, the bridegroom to be King of America."¹⁵² A more reasonable attack was on the score of the praise of monarchy in his "Defence, or rather attack of the American constitutions."¹⁵³ The author of "The Political Science of John Adams" writes of our second President, "Even for America he was a determined advocate of the elective principle only in the case of the house of representatives. In the other two branches he admitted the coming necessity of the hereditary principle, and recommended its adoption when the proper time should arrive. Had he lived till the advent of that time, or had the time arrived during his life, he would have advocated its actual adoption. . . . It was, therefore, by no means an unjustifiable use of language for his opponents to class him as a monarchist." Adams himself left the question more in doubt when he remarked of an "hereditary nobility or Senate" that it was essential to an "*hereditary limited* monarchy" but was "unattainable and impracticable" in America, and added, "I should scarcely be for it, if it were."¹⁵⁴ On the

¹⁴⁹ *Aurora*, July 18, 1799, p. 2.

¹⁵⁰ *Ibid.*, Aug. 17, 1799, p. 3.

¹⁵¹ "The Monarchism and the Foreign Devotion, of Persons in the Government of the Union, established on the testimony of Mr. Adams," *Aurora*, Sept. 26, 1800, p. 2.

¹⁵² Cited by A. J. Beveridge, *Life of John Marshall*, I, 290-291.

¹⁵³ Callender, *Prospect Before Us*, 37.

¹⁵⁴ Letter to B. Rush, Apr. 18, 1790, Adams, *Works*, IX, 566.

other hand, Mr. Walsh believes Adams's adherence to the theory that the people were the "source of all government, stood him in good stead" with the people,¹⁵⁵ which seems very probable. Thomas Jefferson, in 1818, wrote a plausible and in many respects a satisfying interpretation of Adams. "Mr. Adams had originally been a republican. The glare of royalty and nobility, during his mission to England, had made him believe their fascination a necessary ingredient in government, and Shay's rebellion, not sufficiently understood where he then was, seemed to prove that the absence of want and oppression was not a sufficient guarantee of order. His book on the American constitutions having made known his political bias, he was taken up by the monarchical federalists, in his absence, and on his return to the U. S. he was by them made to believe that the general disposition of our citizens was favorable to monarchy . . . Mr. Adams, I am sure, has . . . since thoroughly seen that his constituents were devoted to republican government, and whether his judgment is re-settled . . . or not, his is conformed as a good citizen to the will of the majority, and would now, I am persuaded, maintain it's republican structure with the zeal and fidelity belonging to his character."¹⁵⁶

A study of the Federalist administrations would not be complete without some reference to Alexander Hamilton. Recognized by Jefferson as the "Colossus" of the Federalist party, he seemed a dangerous man to the "republicans." Associated most especially with the unpopular financial measures of the early part of Washington's administration he was thought, by his funding schemes, to be sowing the "seeds of hereditary power."¹⁵⁷ There is every reason to accept Hamilton's own statement of his stand, as found in a letter to Edward Carrington, early in 1792. He declared his real attachment "to the republican theory" and had "strong hopes of the success of that theory." At the same time

¹⁵⁵C. M. Walsh, *Political Science of John Adams*, 283-284. For Jefferson's analysis of the monarchism of Adams see Jefferson, *Writings* (Ford ed.), I, 166, and X, 332. For an explanation by Adams himself see letter to Benjamin Rush, April 18, 1790, Adams, *Works*, IX, 566.

¹⁵⁶Preface to "The Anas," Jefferson, *Writings* (Ford ed.), I, 166-167. See above, pages 22-23, for references to Adams's views in 1776.

¹⁵⁷Compare Benjamin Rush to Jeremy Belknap, June 21, 1792, in *Belknap Papers*, III (*Massachusetts Historical Society Collections*, 6th ser., IV), 527; also Jefferson, *Writings* (Ford ed.), I, 165.

he considered "its success as yet a problem." His whole political philosophy may be learned from the following sentence, "It is yet to be determined by experience whether it [republicanism] be consistent with that stability and order in government which are essential to public strength and private security and happiness."¹⁵⁸ His prominence in the suppression of the "Whiskey Insurrection" seemed to his opponents to prove him an advocate for "crushing down the spirit of republicanism by FORCE OF ARMS!"¹⁵⁹ M. Adet, in 1795, professed to believe that Hamilton had been currying favor with the British [by means of his advocacy of the Jay Treaty] in order to further his own advancement by some monarchical arrangement.¹⁶⁰ During Washington's administration Hamilton played the rôle of a king's minister of the old days, in being the target for popular reproach in connection with government measures which aroused opposition. During Adams's term he continued, in a sense, to fill this rôle, for it was believed, with some reason, that he "secretly ruled the cabinet of Mr. Adams."¹⁶¹ The proposals of Hamilton at the time of the Convention were made public early in 1798 under the head, "IMPORTANT DOCUMENT," and with an editorial note declaring that it "completely unmasks the political character of the man who has been most instrumental in entailing on the United States those pernicious systems under which they now groan."¹⁶² Hamilton was referred to quite commonly as "an avowed monarchist."¹⁶³ In a curious publication of 1799, professing to be a confidential letter from a monarchical Federalist, Hamilton was suggested as the founder of a royal dynasty for the United States. It was argued that an American monarchy might actually be instituted, despite the existing hostility to the idea, judging by the precedents of the acceptance of stamp duties, an excise tax, and, in Connecticut, an Episcopal bishop. "Let us look to the substance and adapt to it such terms as will be most palatable," ran the conclusion.¹⁶⁴ Hamilton's appointment as second in command (first

¹⁵⁸Letter of May 26, 1792, Hamilton, *Works* (Lodge ed.), VIII, 264.

¹⁵⁹Callender, *Seven Letters*, 5.

¹⁶⁰Letter of Dec. 2, 1795, *American Historical Association Report*, 1903, II, 795.

¹⁶¹See, for example, the *Aurora*, Jan. 26, 1801, p. 2.

¹⁶²*Ibid.*, Jan. 13, 1798, p. 3.

¹⁶³For examples see *ibid.*, July 21, 1798, p. 3; *ibid.*, Feb. 5, 1801, p. 2.

¹⁶⁴*Ibid.*, Mar. 2, 1799, p. 2.

under Washington) in the army raised against France in 1798¹⁶⁵ may have suggested this letter, for in it Hamilton is designated as "the great director of our plans, the real and not the ostensible commander of our military forces."

Other "monarchists"¹⁶⁶ could be listed and the charges against them reviewed, but it would add little of moment to the account presented. Certain conclusions are apparent from the charges against Washington, Adams, and Hamilton. Some of them may have been sincere expressions of a fear that the Executive would become so powerful as to be unseated or brought to terms by nothing short of revolution. But in most cases "monarchy" and "monarchical" were either abusive epithets, produced by the intense party feelings of the times, or were terms intended to call attention to alleged similarities between the federalists and real royalists.

In the century and more since the Jeffersonian democrats "saved the country from monarchy" similar charges have been by one party or another. One occasionally hears them to-day in the Senate chamber¹⁶⁷ or reads them in our periodicals.¹⁶⁸ But in drawing conclusions it must not be forgotten that in the last years of the eighteenth century the experiment of republican government was in a much less advanced stage than at the present time and that the absurdity of erecting a monarchy in the United States had not yet been entirely established.

¹⁶⁵On the act increasing the army and similar Federalist "war measures" of 1798 see Bassett, *The Federalist System*, 237. J

¹⁶⁶Most notably Gouverneur Morris.

¹⁶⁷See *Congressional Record*, 66th Congress, 2d Session, 3503, 4124-4129, 4683-4689.

¹⁶⁸For examples see "Autocracy For The U. S. Real Menace After War," by John Temple Graves, in the *Chicago Examiner*, May 27, 1917. See Mr. Root's speech as temporary chairman of the New York Republican Convention, *New York Times*, Feb. 20, 1920. The *Chicago Tribune*, in its leading editorial, August 6, 1921, furnishes an especially clear-cut example of the use of such charges as applied to state politics.

CONCLUSION

Thomas Hart Benton, in his "Thirty Years' View," records some words of Rufus King with the comment that they "ought to be remembered by future generations, to enable them to appreciate justly those founders of our government who were in favor of a stronger organization than was adopted." They are as follows:

"You young men [Benton and his generation] who have been born since the Revolution, look with horror upon the name of a King, and upon all propositions for a strong government. It was not so with us. We were born the subjects of a King, and were accustomed to subscribe ourselves 'His Majesty's most faithful subjects'; and we began the quarrel which ended in the Revolution, not against the King, but against his parliament."¹

This survey of American ideas on government from 1776 to 1801 has presented evidences of the attitude described by Rufus King. The survival of monarchical predilections appeared sufficiently persistent to lead men to give serious consideration to plans, or rumors of plans, of a monarchical nature. Yet if certain men of more than average ability and reputation considered such plans desirable and feasible they hesitated to publish them to the people. They welcomed the Constitution of 1787 with a show of relief which convinces one that if they had desired a monarchical government it was not as an end in itself but as a means of assuring security for "life, liberty and property."

The charges of monarchical purposes brought against the Federalist administrations were for the most part unjustified. Yet they can be understood as manifestations of sincere apprehension on the part of men not yet accustomed to the efficient operations of a strong central government. Party differences arising from the domestic situation were accentuated by the division of opinion

¹T. H. Benton, *Thirty Years' View*, I, 58. Compare and contrast Jefferson's remark, March 15, 1789, quoted above, 56, and footnote on same page.

on contemporary affairs in Europe. The war between Great Britain and France loomed large in the eyes of Americans as a struggle between monarchy and democracy, or, in the terms of the day, between tyranny and anarchy. The outcome was an absence of mutual understanding and coöperation between parties in America, which resulted, in turn, in the exploitation of monarchical charges.

The caution and secrecy maintained in regard to monarchical plans by the persons most favorably inclined towards them, contrasted with the loud-voiced accusations of their political opponents, indicate the existence of popular aversion to monarchy in the period studied.

The main results of the study may be concisely summarized as follows:

I. There is reason to believe that several plans of monarchical character received serious consideration in the United States between 1776 and 1787.

II. The character of the men associated with them entitles these plans to considerable attention.

III. The existence of monarchical purposes in the Constitutional Convention is largely a matter of definition.

IV. The exigencies of practical politics after 1787 account for much but not all of the current suspicion regarding monarchical tendencies from 1787 to 1801.

V. Nearly all of the evidence observed reinforces the belief that ✓ the people of the United States were essentially antimonarchical in the period studied.

APPENDIX A

Colonel Nicola's Apologies to General Washington for having made to him certain Monarchical Propositions.

I

Fishkill 23 May 1782

S^r

I am this moment honoured with yours and am extremely unhappy that the liberty I have taken should be so highly disagreeable to your Excellency, tho I have met with a many severe misfortunes nothing has ever affected me so much as your reproof. I flatter myself no man is more desirous to be governed by the dictates of true religion and honour, & since I have erred I entreat you will attribute it more to weakness of judgment than corruptness of heart. No man has entered into the present dispute with more zeal, from a full conviction of the justness of it, & I look on every person who endeavours to disturb the repose of his country as a villain, if individuals disapprove of any thing in the form of government they live under they have no other choice but a proper submission or to retire. The scheme I mentioned did not appear to me in a light any way injurious to my country, rather likely to prove beneficial, but since I find your sentiment so different from mine I shall consider myself as having been under a strong delusion, & beg leave to assure you it shall be my future study to combate, as far as my abilities reach, every gleam of discontent. Excuse the confusion of this occasion by the distraction of my mind & permit me to subscribe myself with due respect

Your Excellencies

Most obed^t Servant

Lewis Nicola Col. Inv.

II

Fishkill 24 May 1782

S:

Greatly oppressed in mind & distressed at having been the means of giving your Excellency one moments uneasiness, I find myself under the necessity of relying on your goodness to pardon my further troubling you by endeavouring, if possible, to remove every unfavourable impression that lies in your breast to my prejudice. Alway anxious to stand fair in the opinion of good men the idea of your thinking me capable of acting or abetting any villainy must make me very unhappy.

I solemnly assure your Excellency I have neither been the broacher, or in any shape the encourager of the design not to sepe-
rate at the peace 'till all grievances are redressed, but have often heard it mentioned either directly or by hints.

From sundry resolves of Congress favourable to the army, but which that Hon^d Body has not been able to execute, persons who only see what swims on the surface have laid the blame at their door & therefore lost all confidence in promises, how far this bad impression may affect the larger part of the army I cannot say, but should it operate considerably at the conclusion of the war, it may be expected that all obligations shall be immediately discharged, the possibility of which I much doubt, therefore I took the liberty of mentioning what I thought would be a compromise, bidding fair to be satisfactory to one side and not disadvantageous to the other.

Deprived by misfortunes of that patrimony I was born to, and with a numerous family, depending entirely upon my military appointments, when these have failed the tender feelings of a husband and father, seeing his family often destitute of the common necessities of life, have pierced my soul, these feelings often repeated & fraught with anxiety for the future may have sowered my mind & warped my judgment, but in the most sacred manner I protest that had I influence & abilities equal to the task the idea of occasioning any commotions in a country I lived in would be daggers in my breast, and I should think myself accountable at the grand tribunal for all the mischiefs that might ensue, was it my fate to live under a government I thought insupportable I would look on retiring to some other as the only justifiable means I could pursue.

As to my opinion on different forms of government, if it be erroneous, I assure you the fault is owing to a defect in judgment not a willful shutting my eyes to the light of reason.

• However wrong the sentiments I have disclosed to your Excellency may be, they cannot have done any mischief, as they have always remained locked up in my breast.

My mind was so disturbed at the perusal of your Excellencies letter that I do not know what answer I returned, if there was any thing improper in it I must trust to your humanity for pardon & request you will believe me with unfeigned respect

S^t

Your Excellencies most obed^t Servant
Lewis Nicola Col Inv.

III

Fishkill 28 Febr^y 1782 ["Ought to be 28th May 1782" according to Washington's endorsement]

S^t

Since I was honoured with your Excellencies Letter of the 22d Inst. I have assiduously endeavoured to recollect, not only each paragraph, but also every expression of that ill fated representation which has been the occasion of so much trouble to you & anxiety to me, in order to find out what could occasion my intentions being so greatly misapprehended, and cannot attribute it to any thing but an inability to express my sentiments with sufficient perspicuity, and its being introduced by complaints that apparently bear hard on & censure the supreme authority of our Union, which so prejudiced your mind as to prevent attention to my request, that your Excell^{cy} would judge of the whole together & not by detached parts. From this consideration I am induced to trespass further on your goodness in hopes of putting them in a clearer point of view.

Far has it been from my thoughts to suppose that Congress ever entered into an engagement, or made a promise they did not intend to fulfil, but as they were not always executed, I endeavoured to find out the true cause, and by considering such circumstances as have come to my knowledge concluded they were prevented, in some cases by the untoward circumstances of the

times, and in others, by the contracted [?] principles of some without whose assistance that Hon^b Body cannot perform them. I could mention several things in support of this opinion but shall only trouble your Excellency with one report I have heard since my return here, which is that some of the eastern States refused to comply with the request of Congress, to be allowed a duty of 5 per cent on imported goods, from the consideration that if it had such a fund it would be enabled to pay the half pay to the officers already reformed. How true this is is, is impossible for me to determine, but supposing it otherwise, if believed it may operate as much as if it were gospel.

Tho I do not pretend to a larger portion of understanding than the generallity of mankind, yet I flatter myself I am neither an idiot or crazed, one or the other of which must have been the case had I singled out your Excellency for the purpose of countenancing mutiny or treason, & as a fit person to unbosom myself preferably to every other individual within my reach; this I hope will be sufficient to clear me from every suspicion of harbouring sinister designs, and that however inaptly I may have expressed myself, my intention was not to promote but, as far as in me lay, prevent designs that may some time or other be carried into execution & occasion great mischief.

My apprehensions were founded on the following considerations. That numbers of our privates are dissatisfied & ready to break out, were they not prevented by the virtue of their officers, were any number of the latter, at the peace, to consider themselves in danger of being deprived of the fruits of their toils & hazards; of the reward of their services, on which several may depend for the future support of themselves & families, & join with the men the consequence may be fatal; Impressed by these ideas I know not to what man or body of men I could better address myself than to your Excellency, as I am persuaded none is more enabled, by influence on the army, to counter act any bad designs. No person can be more interested in Congress's fulfilling all her engagements than I am, yet I flatter myself that will be done voluntarily or obtained by justifiable means.

Tho the above was a main-consideration I must own it was not the only one, but that I was prompted to the step I took by another inducement. The different forms of gove^l under which

men live, or have lived, have frequently employed my most serious thoughts and the conclusion that all, the jewish Theocracy excepted, have many defects accompanying their good qualities, & that if the latter could be culled & formed into one system it would bid fair to be the most perfect human art could device. When we assumed independence, & each state formed a plan of government for itself I was astonished that none of the thirteen had adopted the english Constitution purged of its defects till I considered that reformers seldom hit the true point of rest, but never stop 'till they reach, one diametrically opposite to that they set out from without considering that extremes may be equally vicious. Montesquieu observes that warm climates are best adapted to subjection & cold ones to freedom, but his sagacity could not foresee that the inhabitants of the sultry climate of Georgia as well as those of the cold region of the Province of Maine would have both concurred in rejecting every shadow of Monarchy.

A man of 60 years of age may reasonably expect that a young republican government will not, in his time, be so vitiated as to render living under it intolerable, therefore, had I none to regard but myself, I should endeavour to glide through the dregs of life with tranquillity, but as my many children give me a prospect of a numerous issue I wish to leave them with the fairest prospect of political felicity possible, therefore as soon as Congress & some States promised to reward their troops with lands I could not help forming the pleasing hopes they might be induced to allot them contiguous to each, with liberty of forming a distinct State under such form of government as those that chose to emigrate might prefer. Satisfied that no person is more likely, by interest with Congress & influence with the army, to promote such a scheme, if approved of, than your Excellency, I took the liberty fully to describe my thoughts to you, & to you alone, possibly induced by the pleasing hopes of seeing a favorite project realised, to go too far.

In such a project as mine the utmost attention should [be] had to every stone of the foundation, which should not be laid without mature deliberation, & that under the guidance of a person who, to considerable abilities can add such a rectitude of heart as to prefer the publick weal to all the dazzling prospects of prerogative

I fear words cannot be sufficient to appologise for the great liberty I have taken therefore shall not trespas any farther on your lenity than to assure you that I am with great respect

S^r

Your Excellencies

Most obed^t Servant,

Lewis Nicola Col. Inv.

APPENDIX B

BIBLIOGRAPHY

I. SOURCE MATERIAL

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JOHN QUINCY ADAMS, *Memoirs*. Edited by C. F. Adams. 12 vols. Philadelphia, 1874-1877. Of importance to the present study rather for what it omits than what it includes.

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- A Collection of Letters Written to and by William Plumer and Transcribed for his Amusement and Instruction*. Covers the years 1781-1804. Especially interesting as showing some of the origins of his later Federalist sympathies.
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- WILLIAM SHORT, *Papers*. A remarkable collection of 52 volumes, for 1778-1849, 31 of which are within the period of the present study. Short, for many years in Europe, both in private and official capacity, corresponded with a variety of persons, from Thomas Paine to Alexander Hamilton, and on both European and American affairs.
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3. Newspapers

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UNIVERSITY OF ILLINOIS STUDIES
IN THE
SOCIAL SCIENCES

Vol. X

JUNE, 1922

No. 2

BOARD OF EDITORS:
ERNEST L. BOGART JOHN A. FAIRLIE
LAURENCE M. LARSON

PUBLISHED BY THE UNIVERSITY OF ILLINOIS
UNDER THE AUSPICES OF THE GRADUATE SCHOOL
URBANA, ILLINOIS

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OPEN PRICE ASSOCIATIONS

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PUBLISHED BY THE UNIVERSITY OF ILLINOIS
URBANA

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PREFACE

The dissertation which follows must be looked upon as an introductory study of the open-price movement rather than an exhaustive one. The movement being of comparatively recent origin, the accumulated data, based on observation and experience, are necessarily inconclusive on many points. In consequence it has been found necessary in many instances to base conclusions mainly on theoretical considerations. There remains for future investigators the obvious task of testing out these conclusions in the light of a more adequate fund of data.

The writer desires to express his obligation to officers of open price associations, too numerous to mention by name, for their cooperation in furnishing data. Special acknowledgments are due to Professor Maurice H. Robinson of the University of Illinois, who suggested the topic and under whose supervision the work has been brought to completion. Appreciation is also expressed to members of the Economics Seminar (1920-1921) of the University of Illinois for permission to read and offer for their criticism certain chapters of the dissertation.

UNIVERSITY OF ILLINOIS.

CHAPTER I

TERMINOLOGY, DEFINITION, PREVALENCE, PURPOSES, AND HISTORIC ORIGIN

TERMINOLOGY

It is not easy to identify an open price association by its name. They are most commonly designated as "associations" or "bureaus" or "institutes" or "societies" or "exchanges".¹

The terms most commonly used to designate the kind of activity engaged in by open price associations are "New Competition", "Open Door Competition", "Open Price Cooperation", and "Cooperative Competition". Perhaps the last named term is the most expressive because it invites attention to the fact that members of an open price association aim to coöperate in such a manner that competition between themselves will not be impaired. The use of such a term as "Open Price Coöperation" is open to the objection that it lays undue stress on the price feature of the open price plan. Many supporters of the plan take the ground that this activity occupies a position of lesser importance than other activities involved in the operation of the plan. That there is some weight to this assertion will be shown in another connection.² Of course the same criticism applies to the use of the term "Open Price Association". However, it has merit in that it calls attention to an activity that is peculiar to this type of association as distinct from that of the ordinary trade association, namely, price reporting.

DEFINITION

The open price association is an organization which provides a medium for the exchange of business information among members of a given industry whereby they may arrive at an intimate

¹Illustrations: American Hardwood Manufacturers' Association; Lumbermen's Statistical Bureau; National Bar Iron Institute; Manganese Steel Founders' Society; Steel Locker and Shelving Manufacturers' Exchange.

²*Cf.* ch. 5, p. 80.

acquaintance with competitive conditions as they exist among themselves and in the whole industry. The business facts most commonly exchanged are those relating to prices actually quoted or charged, terms of payment, manufacturing and selling costs, purchases, stocks, production, orders, shipments, inquiries, bids, contracts, returned goods, cancellations, advertising, and credits.

There are discernible several points of difference between an open price association and the ordinary trade association. The ordinary trade association is very loosely organized and serves only certain general purposes. There is little or no attempt to systematically assemble, compile, and disseminate complete and accurate business statistics. Meetings are infrequent; members do not come much in personal contact at these meetings because the membership is usually large. Divergence of interests is more or less great, making it difficult to secure harmony of action. It is often found that the members of such an association do exchange price information. In so far as this is done, the association may be considered a kind of open price association, but it is not a typical one.

The typical open price association is a small, closely knit organization. Its members place heavy emphasis on the importance of assembling, compiling, and disseminating among themselves complete and accurate statistics. These statistics serve the purpose of putting each member in possession of business facts which will provide him with a basis for the intelligent direction and control of his business. If anything, even more emphasis is put upon the importance of securing frequent personal contact between members. This is accomplished by having frequent meetings. Where membership is relatively large, or where it is spread over a wide area of territory, it is customary to have group meetings. In these meetings members freely discuss all matters of interest bearing on the problems of their industry, including prices that have been received in past transactions. Discussions relating to future prices are not permitted.

PREVALENCE

The open price association is an American institution.³ How many of these associations exist in the United States is very

³Eddy, Arthur J., Address, *American Lumberman*, Dec. 20, 1913.

difficult to determine. One estimate places the number at 250.⁴ A prominent counsel for several open price associations, whose opinion bears weight, states, "It is probably true that no great industry in this country is entirely without some form of coöperation that meets at some point some principle of the so-called open price work. I have no doubt at all that there are as many as three hundred and possibly three times three hundred."⁵ The writer is informed by one of the representatives of a prominent bureau doing open price work that the bureau in question has collected a list of four hundred and twenty-nine open price associations, and the opinion was expressed that there are in existence some four hundred and fifty of these associations.⁶ However the informant did not know what percentage of this number represented associations which had adopted the open price plan in its entirety. Probably the number falling in the latter class would be considerably less.

There is no doubt that the late war gave an impetus to the spread of this association movement. In supplying its needs, the Government made a practise of dealing with associations of manufacturers rather than with individuals. Many associations that were hastily thrown together for war purposes were kept up after the advent of peace.⁷ Requests made by the Government for statistical data relating to such matters as stocks of goods on hand in any given industry, productive capacity of individual manufacturers, et cetera, provided associations with a strong incentive for gathering and compiling statistics relating to their industry.⁸ Many associations, organized to do open price work, sprang up. Ordinary trade associations added certain features of the open price system to their other functions. Shortly after the close of the war, as a part of its avowed purpose of determining the reasons for the high cost of living, the Department of Justice of the United States began a searching investiga-

⁴Rohrbach, C. R., *Printer's Ink*, Feb. 5, 1920.

⁵McKercher, Clark, *Letter*, Nov. 22, 1920.

⁶Armstrong Bureau of Related Industries, Chicago, Illinois.

⁷Rohrbach, C. R., *Printers' Ink*, Feb. 5, 1920.

⁸New York *Journal of Commerce*, May 11, 1917; May 16, 1918.

tion into the workings of certain of the so-called open price associations. Early in the year 1920 a Bill of Complaint⁹ was filed against the largest open price association in the country, the American Hardwood Manufacturers' Association. A month later, the Federal Court for the Western District of Tennessee¹⁰ granted an injunction restraining the members of this association who were members of the open price plan from engaging in any open price activity whatever. Subsequently an announcement was made by one of the assistants to the Attorney General that he considered the law as applied in this case firmly established and that any other associations operating similarly would be proceeded against.¹¹ These events naturally reacted on the rapid spread of associations of this kind and resulted in the suspension of open price activity on the part of many of them,¹² at least temporarily, pending the outcome of the appeal that the members of the hardwood open price plan had made to the Supreme Court. The open price movement is therefore now (1921) at a standstill.

Open price associations may be found in all parts of the United States. A large number of them, if not the largest, appear to have their headquarters in New York and Chicago. A glance at the appended list of associations reputed to be doing open price work¹³ will indicate how widely different are the lines of trade in which they flourish. The list, which is believed to be a representative one, also points to the conclusion that the open price movement in its most highly developed form is spreading most rapidly in lines of trade wherein the number of competitors is relatively small.¹⁴

The reasons for this would appear to be, in the first place,

⁹*Bill of Complaint*, American Column & Lumber Co. et al vs. U. S.; Bill filed in Federal Court for Western District of Tenn., Feb. 1920.

¹⁰*American Lumberman*, Mar. 20, 1920. Decision rendered in March, 1920.

¹¹*American Lumberman*, Mar. 20, 1920. Statement of Judge C. B. Ames, Assistant to the Attorney General.

¹²For instance, National Coal Assn., Hollow Building Tile Assn., National Warm Air Heating and Ventilating Assn. Several in lumber industry.

¹³*Appendix Exh. I.*

¹⁴One of the largest, if not the largest, open price association of the fifteen or sixteen organized by Mr. Eddy, i. e., The National Association of Finishers of Cotton Fabrics, has sixty-seven members. The average number seems to be no

that groups of competitors in the smaller lines, not having the benefit of trade papers, feel a peculiar need of some medium for learning of conditions of trade. The open price system meets this need. In the second place it is, generally speaking, true that the more numerous the competitors in a given line are the more difficult it is to bring about effective coöperation between them. This is particularly true when the coöperation required is of a most intimate and unprecedented kind. Even the most intelligent of business men find it difficult to grasp the spirit of coöperation which makes men willing, for example, to lay bare before competitors vital statistics pertaining to their own businesses. Filled, as he is, with distrust and suspicion of the motives and actions of his competitors, the ordinary business man is not easily reconciled to a program which involves coöperation with them in this very intimate way. A long campaign of education must ensue before these barriers can be cleared away. Even when he has reached the point where he is willing to coöperate, there is the difficult task of teaching him to be accurate, punctual, and regular in reporting such information as may be requested of him by the bureau gathering, compiling, and disseminating the information.

The open price plan has been in existence for about nine years only.¹⁵ It would seem almost impossible, then, for lines of trade with large numbers of competitors to have arrived at a very high stage of development in open price work. Some industries, like the textile industry, do have open price associations that are highly developed in their structure and functional activities, but it will generally be found that their activities are limited to certain lines of trade in the industry wherein competitors are relatively few and processes are more or less simple and therefore comparatively easy to standardize.

The lumber industry, perhaps, offers the most conspicuous example of the attempt to secure coöperation of a large body of competitors in its entirety under the open price plan. Even in

greater than twenty-five. Cf. Testimony of Wm. J. Mathews before the Joint Legislative Committee on Housing, Legislature of New York, Dec. 29, 1920, pp. 4602-4603.

¹⁵This statement is written in 1921.

the most successful association of the many in the lumber industry doing open price work—the American Hardwood Manufacturers' Association—it was found well nigh impossible to secure sufficient coöperation among competitors to make the plan entirely successful. Early in the year 1919, after an existence of about two years as a consolidation of two associations that had existed for several years previous, the membership had nearly reached the four hundred mark. This membership controlled but twenty-eight per cent of the total hardwood production of the industry.¹⁶ Thousands of small sawmill owners scattered over practically the entire United States east of the Mississippi River and west of the Mississippi River, in the States of Missouri, Arkansas, Louisiana, and Texas were not members. The United States census for 1910 gives between 12,000 to 15,000 independent hardwood sawmills.¹⁷ Such statistics of stocks, production, et cetera as were reported by the members would not give totals which could be considered representative of the hardwood industry, except in a very crude, inaccurate way. Enough competitors must coöperate in furnishing information to make it possible to at least reduce the operations of the remaining ones to a calculable basis. Those who did join the association were very dilatory in furnishing information. It was found necessary to give up the plan of having all members make monthly reports of their production, because members failed to do so.¹⁸

In the coal industry an attempt has been made to cope with the problem of getting coöperation among large numbers of competitors by having several local bureaus for the gathering, compiling, and dissemination of statistics, each one of them being located in a coal operating center. Each local bureau then keeps the operators in its vicinity lined up, obtains the necessary statistics from them, compiles them and relays them to the association headquarters, where they receive further treatment in

¹⁶American Column & Lumber Co. et al vs. U. S., *Argument of L. C. Boyle before the Supreme Court*, p. 6.

¹⁷*Ibid.*, p. 35.

¹⁸American Column & Lumber Co. et al vs. U. S., *Transcript of Record*, Vol. II p. 1107.

the way of tabulations and compilations, after which they are returned to the various local exchanges, where they are again disseminated among the local operators.¹⁹ Fearing legal consequences, the association ceased issuing market reports in July, 1920. How successful this scheme was in getting the desired coöperation is not known.

Probably open price associations occupy as important a place in the lumber industry as they do anywhere else. The recent report on the lumber industry rendered by the Federal Trade Commission to the Senate and the House²⁰ discloses that all ten of the lumber manufacturers' associations affiliated with the National Lumber Manufacturers' Association have been engaged in open price activity. There are only two large associations devoting themselves principally to the interests of manufacturers that are not affiliated with the National Lumber Manufacturers' Association, namely, the National Hardwood Lumber Association and the American Hardwood Manufacturers' Association. Of these only the National Hardwood Lumber Association has not been doing open price work. The Southern Pine Association ceased doing open price work when the United States Attorney General filed a bill of complaint against the American Hardwood Manufacturers' Association. The latter association, prior to the cessation of its open price activities, was not only the most notable example of an open price association in the lumber industry, but it was the largest open price association in existence.²¹

The Yellow Pine Wholesalers' Association having recently ceased operation under the open price plan, it appears that no associations of wholesalers are now engaged in open price work.

As far as can be ascertained, only one retail lumber association is doing open price work, that being the Chicago Lumber Dealers' Association.²²

Open price associations seem to occupy a position of nearly as great importance in textiles as they do in lumber. A chronic

¹⁹Editorial, "How National Association Reports Sales." *The Black Diamond*, Oct. 11, 1919.

²⁰*Preliminary Report*, Federal Trade Commission, Jan. 10, 1921, Pt. 1, p. 1.

²¹For further discussion, see ch. 7, pp. 137-148.

²²*Preliminary Report*, Federal Trade Commission, Jan. 10, 1921, Pt. 2, p. 101.

condition of cut-throat competition characteristic of the textile industry has tended to abet the movement;²³ however, the secretiveness of competitors, explained in large degree by the importance to them of securing individuality and originality of styles, has impeded the movement,²⁴ as has a certain determined opposition manifested by buyers against these associations, particularly in the knit goods line.²⁵ Close to a dozen open price associations are said to be in operation.²⁶ All of these exist among manufacturers, with the exception of one or two to be found among jobbers.²⁷

The first to adopt the open price plan were the important finishing firms (bleachers, dyers, printers). In 1914 they united to form the National Association of Finishers of Cotton Fabrics. Mr. Eddy organized it and was its counsel from the beginning.²⁸ It is said that by the end of 1916 all of the cotton finishers had joined the association.

Its success in helping the finishers to weather the depression that hit the textile industry in 1914 stimulated mill owners in other centers to adopt the plan. By the end of 1915 such associations existed in Boston, among knit goods manufacturers there, among mill owners at New Bedford and Fall River, and among certain of the mill owners in Southern cotton centers.

Late in 1915 a joint council composed of representatives from the two national associations—the National Cotton Manufacturers' Association and the American Cotton Manufacturers' Association—met to consider the feasibility of joining in the open price movement. As a result of their deliberations it was concluded that because of the complicated and involved nature of the dry goods trade it would probably not be practicable for the national associations to attempt to do open price work, and that such work could best be outlined and developed in each line of trade taken as a unit.²⁹

²³New York *Journal of Commerce*, Sept. 18, 1916.

²⁴*Textile World Journal*, Jan. 20, 1917.

²⁵New York *Journal of Commerce*, Mar. 19, 1920.

²⁶*Ibid.*, Mar. 19, 1920.

²⁷*Ibid.*, Mar. 19, 1920.

²⁸*Ibid.*, Nov. 11, 1915. Mr. Eddy is called the "father" of the open price plan.

²⁹*Ibid.*, Nov. 11, 1915.

In the woolen industry open price work was inaugurated in 1917, when the so-called "Woolen Exchange" came into existence under the auspices of the National Association of Woolen Manufacturers.³⁰ Its membership represents a considerable percentage of the wool manufacturing machinery of the country.³¹ This is now the only open price association to be found in the woolen and worsted industry.

For a few months the Pennsylvania division of the National Association of Hosiery and Underwear Manufacturers operated an open price plan, but an investigation into its affairs by the Federal Trade Commission became the signal for its abandonment.³² Among the knit goods manufacturers there now is operated an open price exchange called "The Knit Goods Manufacturers of America." Its members control about one-third of the entire production of the industry.³³ Other associations are in operation among the gingham, duck, blanket, silk, and blouse and shirt manufacturers.³⁴

As a center of open price activity, the iron and steel industry is also deserving of special mention. How extensive the movement is in this industry may be partially revealed by examining the list of associations reputed to be engaged in open price activity which may be found in the appendix.³⁵ There is the Institute of Tool Manufacturers, the National Bar Iron Institute, the Tool Steel Society, the Cold Roll Strip Steel Institute, the Bolt, Nut, and Rivet Institute, the Hoop Band Strip Steel Association, the Rolling Steel Door Society, the Steel Barrel Manufacturers' Association, the Architectural Iron and Bronze Manufacturers, Steel Lockers and Shelving Manufacturers' Exchange, the Tap and Die Institute, Steel Founders' Society of America, National Association of Sheet and Tin Plate Manufacturers, Range Boiler Exchange, Pressed Metal Association, National Association of Steel Furniture Manufacturers, Pipe

³⁰*Textile World Journal*, Aug. 5, 1916.

³¹*Ibid.*, Jan. 13, 1917.

³²*Textile World Journal*, May 20, 1918.

³³*Ibid.*, May 25, 1918.

³⁴Gingham Assn.; Duck Assn.; Blanket Assn.; Silk Association of America; National Boys Blouse & Shirt Manufacturing Assn. All in New York City.

³⁵This list is not thought to be complete. See *Appendix*, Exh. 1.

Fittings and Valve Exchange, Manganese Steel Founders' Society, Manganese Track Society, the Associated Manufacturers of Metal Lath, Drill and Reamer Society, and Bridge Builders and Structural Society. It is in the iron and steel industry that the greatest number of typical open price associations seem to be found. Inquiry develops that, with a few possible exceptions,³⁶ the associations here listed were either organized by Mr. Eddy or by men who came under his influence, directly or indirectly. The majority of them are in small industries, relatively speaking, and even the larger industries have relatively few competitors. It may be worthy of note that the United States Steel Corporation is not a member of any open price association. All of the independent makers of iron and steel, however, are understood to be members.

With respect to the relative distribution of open price associations among manufacturers, wholesalers and retailers, it may be said that the movement is almost exclusively confined to the manufacturing class. One or two associations are known to be operating among jobbers in the textile industry,³⁷ and one among a group of retailers in the lumber industry.³⁸ Until recently one was in operation among yellow pine lumber wholesalers. Wholesalers and retailers generally carry so many different lines of commodities that they find it impracticable to associate themselves in open price work. Retailers do not especially need to exchange information with respect to prices, because they are in the habit of marking their goods so that everyone, including competitors, may know what prices are being asked. Furthermore, it is to be remembered that, since wholesalers are engaged principally in buying and selling, they have built up an organization which is highly efficient in obtaining its own market information, and they are therefore as a class less dependent on such aid as might be furnished to them by an open price association than are the manufacturers.

³⁶Steel Barrel Assn.; Associated Manufacturers of Metal Lath; National Association of Steel Furniture Manufacturers.

³⁷New York *Journal of Commerce*, Mar. 19, 1920.

³⁸[i.e. The Chicago Retail Lumber Dealers' Assn. See *Report*, Federal Trade Commission, Jan. 10, 1921, Pt. 2, p. 101.

PURPOSES

The ultimate aim of all open price associations is to effect greater stability in business conditions, in order that profits may be made, if not greater, at least more steady, dependable, and calculable from year to year.³⁹

As for the immediate objects of these associations, it appears that among the associations that attribute their existence directly or indirectly to the influence of Mr. Eddy, there exists a very close harmony. On the other hand there appears to be little uniformity among associations that have worked out open price activity for themselves, or that have simply annexed open price work to other functions previously in existence.

The Eddy associations usually emphasize as their objects:

1. The promotion of publicity in the transaction of business;
2. The promotion of cordial and friendly relations among members;
3. The absence of secrecy at meetings, or in the operations of the association;
4. The non-existence of penalties of any kind in connection with operations;
5. The freedom of members to quote at all times such prices and terms as they please;
6. The collection and dissemination of statistics of importance to the industry, including prices actually quoted or charged, but excluding reference to future prices either in reports or meetings;
7. The correction by legitimate means of all "unintelligences", faulty standardization, and abuses in the trade. Some of them also specifically have for an object the devising of cost accounting systems suitable for the industry, and coöperation in the standardization of sizes and dimensions.⁴⁰

Other objects are sometimes mentioned but they are not peculiar to the operation of an open price association.

Open price associations that do not fall in the Eddy class show considerable variation in the number and nature of the objects set forth. The Ohio Millers' State Association, for example, expresses its objects in a sentence, to wit: "The object of

³⁹E. H. Gaunt states that the aim is not only to stabilize prices, but to increase the margin of profit. Cf. *Textile World Journal*, Apr. 8, 1916, p. 1709.

⁴⁰*Constitution*, Leather Belting Exchange; American Hardwood Manufacturers' Assn.; Salt Producers Assn.; Tap and Dye Institute; Society of Manufacturing Confectioners; The National Coal Assn.; Knit Goods Manufacturers of America.

this association is the cultivation of commercial good will and fellowship among millers, the encouragement and protection of their trade, the promotion by every expedient and lawful means of the interests of their business, and to legally acquire and disseminate valuable mercantile and economic information of interest to its members, thus securing by fair and lawful means the benefit of coöperation."⁴¹ There is very little hint here of the existence of open price activity. In fact, open price work in this instance is confined to a weekly report of prices received which members mail to the secretary, who in turn tabulates these prices and mails them in mimeograph form to the contributing members.

Another constitution, typical of the lumber industry,⁴² sets forth nine objects, but only one of these mirrors to any extent the purposes usually associated with open price work. This is the second object and reads as follows: "To gather, compile, and disseminate data reports, statistics, and information relative to the properties, uses, values, production, transportation, distribution, and consumption of and markets for lumber and other forest products in all markets, and the best and most economical methods of manufacturing, handling, transporting, and disposing of said forest products; to gather, compile, and disseminate information as to the taxation of forest products and of timber lands and the cultivation, protection, and conservation of forests."⁴³

Returning to a more detailed consideration of the objects as set forth by the typical Eddy association, it is found that no one object receives more emphasis than that which aims to promote cordial and friendly relations among members. The ordinary trade association also makes this one of its objects, but the open price association aims to make its accomplishment more certain by having meetings at frequent intervals. Members of the ordinary trade association usually meet once or twice a year. The motive in promoting cordial and friendly relations among members is to remove so far as possible misunderstandings and

⁴¹*Constitution*, Ohio Millers' State Assn.

⁴²*Constitutions* of the Southern Pine Assn. and the American Hardwood Manufacturers' Assn. resemble more those of the Eddy Associations.

⁴³*Constitution*, West Coast Lumber Manufacturers' Assn.

ill feelings due to the spreading of false reports and baseless charges and ignorance of conditions prevailing in the industry.⁴⁴

A second object, of little less importance, is that which refers to the collection and dissemination of accurate information relating to the industry, including statistics of prices. The National Association of Finishers of Cotton Fabrics puts it this way: "To collect and disseminate accurate information relating to the finishing of cotton fabrics, to the end that each finisher, however small his output, may be placed, in so far as data for the intelligent conduct of his business goes, on a footing of equality with other finishers."⁴⁵ It may be worth noting, in passing, that it is here considered a valuable object to help put the small competitor on a footing of equality with the larger competitor in the matter of knowledge of business conditions. The fifth object of the Bridge Builders' Society is "to establish frankness regarding terms, bids, prices actually made."⁴⁶ With reference to prices, nearly always there is to be found a provision which prohibits members from discussing what their future prices are to be. This provision is intended to make it clear that there is to be no attempt to control the trend of future prices, but merely to record past prices. To attempt to control future prices would be illegal.⁴⁷

In this connection the following quotation is found to be typical: "To bring out in the open all existing competitive conditions and to introduce an open price policy, to the end that whatever price information is distributed will be absolutely accurate and confined to purely statistical information regarding sales and prices that have been actually made. Nothing herein stated permits any member to file or otherwise give any information regarding any price he expects to make or would like to obtain."⁴⁸

Provisions that there are to be no penalties of any kind in

⁴⁴*Constitution*, Society of Manufacturing Confectioners.

⁴⁵*Constitution*, National Association of Finishers of Cotton Fabrics, quoted by H. R. Tosdal, "Open Price Associations." *Economic Review*, June 17, 1917.

⁴⁶*Constitution*, Bridge Builders' Society, quoted by H. R. Tosdal, "Open Price Associations." *Economic Review*, June 17, 1917.

⁴⁷This is discussed in ch. 8, pp. 161-162.

⁴⁸*Constitution*, Society of Manufacturing Confectioners.

connection with the operation of the plan are of course put in in order to show the clear line of separation that exists between open price associations and combinations that attempt to enforce agreements to control output or prices by means of penalties. The only penalty usually provided, if it may be called such, is that those who do not file the information called for by the reporting plan get no information. Those who file only part of the information called for get like information in return, and no more. One association has an additional penalty to the effect that a failure to report for twelve days in six months will cause the member failing to be dropped from membership.⁴⁹ The laxness shown in reporting has made provisions of this kind necessary.

The further provision, that members are to be free at all times to quote such prices and terms as they please, also aims to show clearly that the open price association has nothing in common with illegal combinations of one kind or another that attempt to put price restraints upon members. It may be said in this connection that some open price associations, at least, expect members who have made a particularly low price to explain in meeting the reasons that prompted them to make this low price.⁵⁰ Others merely provide the opportunity for such explanations to be made. As a rule no one but the secretary knows the identity of the persons that have made this price. Without actually making their identity known he will invite such persons to make an explanation if they care to do so.⁵¹

The promotion of publicity in all business transactions and absence of secrecy in meetings and in association operations is insisted on by those associations that endeavor to follow strictly the principles laid down by Mr. Eddy. Mr. Eddy writes as follows: "There is no reason why the American manufacturer should not throw his shop open to customers, why he should not mark everything he makes in plain figures and let everybody know what those figures are, changing them as he pleases, but

⁴⁹*Reporting Plan*, American Hardwood Manufacturers' Assn., *Transcript of Record*, American Column & Lumber Co. vs. U. S., Vol; I, p. 86.

⁵⁰Lord, F. W., *Ethics of Contracting and Stabilizing of Profits*, p. 174.

⁵¹The National Association of Box Manufacturers follows this procedure.

changing them to all alike, making such discounts as he pleases on large orders, but making them openly."⁵² Inquiry develops that few of the open price associations are willing to go to the length of inviting buyers to utilize information that has been collected in the central office. The Hardwood Manufacturers' Association is a notable exception. In this case the Manager of Statistics encouraged buyers to make inquiries, for example, regarding the location of items of stocks of lumber and the quantities available.⁵³ Some of the associations permit members to invite customers to attend meetings;⁵⁴ others do not.⁵⁵ The American Hardwood Manufacturers' Association was very free in permitting outsiders to attend meetings, and hardly a meeting passed that was not attended, either by customers, representatives of the press, or other outsiders.⁵⁶ It is evident that few members of open price associations have yet reached the point where they are willing to confide their business affairs to the public. This is not to be wondered at. The idea that business should be conducted in secret has so long had possession of the business man that it will take years of education to persuade him to adopt the policy of full publicity. In the retail trade, "it has taken a century to grow into the one-price-plainly-marked policy."⁵⁷

The object which calls for the correction of all "unintelligences" is in line with the idea that ignorance of competitive conditions is a millstone to industrial prosperity. In this connection, the purpose as expressed by the American Hardwood Manufacturers' Association is "to disseminate among members accurate knowledge of production and marketing, so that each member may gauge the market intelligently instead of guessing at it."⁵⁸

Coöperation in devising cost accounting systems and coöpera-

⁵²Eddy, A. J., *New Competition*, 1912, p. 108.

⁵³*Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1101.

⁵⁴For instance, Society of Manufacturing Confectioners, American Hardwood Manufacturers' Assn.

⁵⁵Steel Barrel Manufacturers' Assn. for instance.

⁵⁶*Minutes of Meeting*, *Record*, American Column & Lumber Co. vs. U. S., Vol. I, p. 165.

⁵⁷Eddy, A. J., *New Competition*, 1912, p. 115.

⁵⁸Gadd Exhibit "B," *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1226.

tion in the standardization of sizes and dimensions are not functions that are peculiar in any sense to open price associations. These are very common activities of the ordinary trade association. Knowledge of costs makes an intelligent competitor out of an ignorant one. Open price associations can therefore not afford to ignore this function. Altho only a few associations give the special mention of cost accounting that its importance warrants, yet it will be found that practically all open price associations are engaged in cost educational work. It is noteworthy that one association states that its purpose in devising a uniform system of cost accounting "is not to impose upon any member any cost items or to use in any manner the cost system as a means for controlling prices."⁵⁹ Coöperation in standardization of sizes, dimensions, and processes, et cetera, is an integral part of the work of all open price associations, because prices cannot be intelligently compared unless the products subject to price quotation are comparable in size, shape, and quality.

Other objects of open price associations, such as the exchange of information relating to contracts, returned goods, cancellations, advertising, and credits are not usually given specific mention in constitutions but are provided for by some such clause as "the collection and dissemination of statistics of importance to the industry."⁶⁰

HISTORIC ORIGIN

The earliest open price associations of which record can be found had their birth in 1911 in the iron and steel industry and in 1912 in the lumber industry.

In the iron and steel industry, the earliest association on record is that of the Bridge Builders' Society, now known as the Bridge Builders' and Structural Society, with headquarters in New York City. This society was organized by Mr. Eddy in 1911. Twenty-five companies doing structural and bridge work went into it. Only one important independent concern did not join; this was

⁵⁹*Constitution, Knit Goods Manufacturers of America, Textile World, May 19, 1917.*

⁶⁰The following exception is noted: "To diffuse accurate and reliable information among its members as to the standing of merchants and others engaged in making or selling of knit goods or the furnishing of materials therefor." Quoted from *Constitution, Knit Goods Manufacturers of America, Textile World, May 19, 1917.*

a subsidiary corporation of the United States Steel Corporation, namely, the American Bridge Co. Mr. Eddy organized this association strictly along the lines advocated in his book which made its appearance a year later.⁶¹ Meetings were to be held once a month. They were to be public. All orders, prices, and tonnage were to be reported to a secretary. Those who filed copies of bids pertaining to any given piece of work would immediately receive a statement from the secretary showing the prices indicated on all the other bids that had been filed. Orders would be handled in the same way. Once a month the secretary would report to the whole society the tonnage taken by each member during the past month, together with the total tonnage. A constitution and by-laws were adopted similar in form to those which have been described as being typical of the Eddy associations. The following quotation taken from the fifth object of the constitution illustrates the care taken to make clear that there was no intent to restrict competition: "To this end each member of the society agrees to file with the secretary copies of all bids, terms, and prices within such period after same are made as may reasonably be required by resolution or by-law, it being definitely understood that each member is at all times free to make such bids and quote such terms and prices as he pleases, and to change the same at will, either before or after filing with the secretary, either before or after receiving information regarding bids, terms, and prices made by others, the only obligation being to file promptly all bids, terms, and prices as the same may be from time to time made."⁶²

The second open price association to be founded in the iron and steel industry was the Manganese Track Society, in 1912, and the third, the Manganese Steel Founders' Society, in 1913. They were patterned after the Bridge Builders' Society.⁶³ Following these the movement took on greater rapidity, with the

⁶¹Eddy, A. J., *New Competition*, New York, 1912.

⁶²*Testimony of J. S. Dean, Record, U. S. vs. United States Steel Corporation*, Vol. II, pp. 797-811.

⁶³*Testimony of J. S. Dean, Record, U. S. vs. United States Steel Corporation*, Vol. XX, pp. 7970, 7971.

result that there now exists a score or more open price associations in the iron and steel industry.

The lumber manufacturers started to work out their own system of exchanging information relative to stocks, production, shipments, and sales as early as 1912. Even before this time⁶⁴ the then largest association among lumber manufacturers, the Yellow Pine Association, later reorganized under the name of the Southern Pine Association, was collecting statistics of stocks, production, and shipments, and occasionally the secretary would call for a report of sales.⁶⁵ He used these reports of sales as a basis for making up a price list and also as a means of learning how closely members were conforming to the price list previously issued. In making up the new price list the secretary would include in it only the highest prices shown by any of the sales reports. The list would then be issued to members with the understanding that it was to be used as a guide in quoting future prices. The result was, in the words of the judge of the Supreme Court of Missouri, who condemned this practise, that "prices charged revolved about prices fixed like planets in their orbits revolve about the sun."⁶⁶ The plan was a price boosting scheme pure and simple. It was altogether incompatible with the open price plan, which requires that members are to be free to quote such prices as they please, and that all prices filed with the secretary shall be reported by him to the members, be they high or low. Following this condemnation by the court, the yellow pine manufacturers involved reorganized on legitimate open price lines. It was at this reorganization meeting that some of the men present called Mr. Eddy's attention to the fact that the plan he was explaining to them was already being tried out in a small way by a group of lumber manufacturers in Mississippi.⁶⁷

Inquiry made by the writer of one of the men present at this meeting elicits the following: "The account that you found in the *American Lumberman*, December 20, 1913, is correct. The open price idea was started in Laurel, Mississippi, by a group

⁶⁴As early as 1906. Cf. *State vs. Arkansas Lumber Co. et al*, 169 S. W., p. 156.

⁶⁵*Ibid.*, p. 156.

⁶⁶*Ibid.*, p. 177.

⁶⁷*American Lumberman*, Dec. 20, 1913.

of three or four mills in this city in an informal way. At that time each mill made four or five copies of orders received each day and sent one of these copies to each of the other mills in town. After a time, other neighboring mills asked to be put on the exchange list and some four or five mills in nearby towns were added. No central secretary was used in compiling or sending out the information. This system ran along for several months and was very successful and beneficial.

"In December, 1913, Mr. Eddy, an attorney living in Chicago, requested the yellow pine representatives to meet him in St. Louis to hear a talk on the open price competition idea, which he had developed in several other industries. The writer attended this meeting, and much to his surprise found out that Mr. Eddy's plan was merely an elaboration of the system which we already had in effect.

"Whether or not Mr. Eddy was the originator of the idea, I am unable to state. It may be that in 1913 we read of his plan and tried it on our own initiative. I cannot state positively whether this is the case, or whether the same idea occurred to us without knowledge of Mr. Eddy's plan."⁶⁸

It would appear from this that altho Mr. Eddy's influence in the lumber industry was early felt, there is some room for belief that the open price movement in an elementary form, at least, had originated in certain localities independently of Mr. Eddy's intervention, if not of his influence. This point of view is further substantiated by information received from the secretary of a lumber manufacturers' association having headquarters in Oregon.⁶⁹ He writes as follows: "You are right in supposing that this association has operated an open price plan, or as we have called it, an information bureau, since 1912. Our idea originated in a way within the association, but it first became effective locally in certain regions on the West Coast, where the manufacturers of fir created small exchanges independently for the exchange of sales data." He adds, however, "but it is my recollection that a book was written on the subject and that the writer of the book or pamphlet made numerous addresses on the

⁶⁸Gardiner, P. S., *Letter* dated Nov. 26, 1920.

⁶⁹Western Pine Manufacturers' Assn.

subject in various parts of the country. I am inclined to think that this was the origin of the idea."⁷⁰ He is undoubtedly referring here to Mr. Eddy. So-called "Information Bureaus" also were developed in the year 1912 by the West Coast Lumbermen's Association, the North Carolina Pine Association, and the Northern Hemlock and Hardwood Manufacturers' Association.

Evidence seems to warrant the conclusion that the origin of open price associations in the lumber industry is attributable to the publicity that Mr. Eddy gave to his plan in the years of 1911 and 1912.

The lumber and iron and steel industries offer the earliest examples of open price associations on record. The other industries seem to have followed in their wake.

The Babson Statistical Organization helped to popularize the open price movement by devoting a session to it at each of its annual conferences for manufacturers in 1914 and 1915.⁷¹ Furthermore this organization began publishing, as a part of its service to manufacturers, a set of bulletins that are intended to serve as a guide to those who are contemplating inaugurating the open price plan.⁷²

Enterprising men who have picked up the rudiments of the plan either from Mr. Eddy himself, or from his writings, have organized secretarial service bureaus. These are so organized that they can take over the operation of several open price associations and run them simultaneously. Secretaries of these bureaus are constantly on the watch for opportunities to organize manufacturers into open price associations and are proving a strong factor in their development. Some of them operate as many as a dozen associations.⁷³ The result of the publicity given to the movement through the instrumentality of these various factors, is becoming increasingly apparent. There is hardly a trade secretary that does not know something of the workings of the plan and a surprising number of business men are acquainted with it.

⁷⁰Cooper, A. W., Secretary, Western Pine Manufacturers' Assn., *Letter*, Dec. 17, 1920.

⁷¹Gaunt, E. H., "Open Price Plan for Woolens and Worsteds," *Textile World Journal*, April 8, 1916, p. 1709.

⁷²*Babson's Reports on Coöperation*, Wellesley Hills, 1915.

⁷³For instance, Organization Service Corporation, New York City; A. A. Ainsworth, New York City.

CHAPTER II

DESCRIPTION OF THE COMBINATION AND ASSOCIATION DEVELOPMENT IN THE IRON AND STEEL INDUSTRY AND COMPARISON WITH THE OPEN PRICE ASSOCIATION

Beginning with the combinations, in existence some twenty years ago, and closing with the open price association, there is manifest a more or less orderly development from one stage of activity to another. These stages may be named as, first, the Combinations, second, the Statistical Associations, third, the Gary Dinners, fourth, the Open Price Associations. Each of these types will be discussed and compared with the open price type.

The price fluctuating evil so characteristic of the iron and steel industry has led iron and steel producers to seek remedies in these various forms of associated activity. The combinations exemplified by such organizations as the Structural Steel Association, the Steel Shafting Association and the Steel Plate Association, had little in common with the open price association.¹ These combinations resorted to price fixation, regulation of output, and division of business on a percentage basis.² The open price association seeks to put each competitor in possession of all the salient facts of the industry, trusting that the desired objectives will be attained by individual independent action, without collusion of any kind, through the exercise of intelligent management and control over each business unit.

In addition to price fixation, regulation of output and allotment of business were outstanding features of the combination.³ Obviously records had to be kept to show in what degree members were carrying out their agreement. These usually took the form of sworn monthly statements of output, orders taken, and tonnage

¹These operated from about 1900 to 1904. *Cf. Record*, U. S. vs. U. S. Steel Corporation, Vol. IV, p. 1413; Vol. II, p. 821.

²*Record*, U. S. vs. U. S. Steel Corporation, Vol. IV, p. 1413; Vol. XV, p. 6046.

³*Ibid.*

shipped. In the majority of cases, the price being fixed, no purpose was served in requiring a report of prices. Penalties were provided for those who exceeded their percentage of allotted business. Those who exceeded the output agreed upon, were taxed a certain amount, based on a charge per ton or per hundred tons on the amount of the excess. Those who fell short of shipping their allotted percentage, were credited with a corresponding amount based on the amount that had been shipped less than the allotted percentage. The commissioner after making these calculations would send the compiled reports to each member.⁴

It may be noted that the exaction of penalties, tho necessary in those days when so little confidence prevailed among competitors, is entirely out of harmony with the philosophy of the open price plan which has for its aim the upbuilding of a spirit of confidence and trust among competitors.

The reporting system in use among combinations may have given Mr. Eddy the clue which led him to develop the reporting system that he did in the open price association. The combination reporting scheme, altho narrow in scope, resembled somewhat that in vogue in the open price association. The combination system called for reports of production, orders, and shipments; so does the open price system. The commissioner compiled and disseminated these statistics; so does the secretary of an open price association.⁵ The form in which the statistics were compiled was of course not identical with forms in use by open price associations because the objects have not been similar. The object of the members of the combination was to regulate business by means of collusion in controlling output and dividing business. Such statements as were prepared and disseminated were, therefore, intended to show the members how closely they were conforming to the provisions of their agreement. The object of the open price association being to educate members in all conditions pertaining to their business so that they may compete intelligently, such compiled reports as are disseminated are intended to enlighten each member with reference to his relative position as

⁴*Testimony*, W. C. Temple, *Record*, Vol. XV, p. 6032.

⁵*Reporting Plan*, American Hardwood Manufacturers' Assn., *Record*, American Column & Lumber Co. vs. U. S., Vol. I, p. 86.

regards volume of production, orders and shipments, et cetera. The foregoing makes it clear that the combination and the open price association have no essential features in common except a certain resemblance in the manner of reporting statistics of production, orders and shipments.

It has been noted that the ultimate object of combination and open price association activity has been to stabilize conditions. It is perhaps worth while to note in passing that their immediate objects also seem to have points of identity. A prominent object of both types of association apparently has been to combat the efforts put forth by buyers to "beat down" prices by misrepresenting prices actually current among competitors. This practise seems to have prompted plate and structural steel producers to organize the structural and plate pools in 1900. Note the testimony of the commissioner:

"Prior to 1897 there were disastrous times in the steel industry. Manufacturers of structural and its sister product, plate, which enters largely into structural, had been fooled so often and so completely by some of the biggest buyers of structural material in the market that apparently there was always somebody who was ready to quote twenty or twenty-five per cent below the cost to produce the manufactured stuff, judging from the quotations that buyers would bring to the manufacturers. Finally two or three manufacturers got together and swapped notes and found to their surprise that each of them had been quoting prices, five, six, and seven dollars a ton less than they had ever quoted to anybody, and they awoke to the fact that they had probably been lied to."⁶

When, however, it came to the point of determining upon a remedy the methods chosen proved to be at opposite poles from each other. The open price plan aims to meet a situation of this kind by providing for the exchange of information between competitors. Knowing all the facts, the contention is that they will then not be deceived into meeting a price that is purely fictitious.⁷ Each competitor is left free to name his own price, but he is now in a position to do so intelligently. The organizers of these pools

⁶Temple, *Record*, Vol. XV, p. 6046.

⁷Cf. Jay, *Record*, Vol. XX, p. 7971.

attempted to meet the situation by fixing a minimum price to which all agreed to adhere. Speaking of the action taken by the organizers of these pools, the commissioner went on to say:

"They called for a meeting among a large number of them and they found that the only way to block that thing was for them to get together and agree on a price and tell each other the honest truth as to what prices they were quoting."⁸

With the decade beginning 1900, the Government began vigorously to enforce the Sherman Act. In view of this state of affairs Mr. Gary decided to withdraw all subsidiaries of the United States Steel Corporation from participation in pools. This step was taken in 1904 and led to the immediate disruption of the principal combinations in the iron and steel industry.⁹

They were replaced by the so-called Statistical Associations. The members formerly associated in the combinations simply changed the nature of their activities so that they might appear less offensive. With this stage of association activity, it becomes easier to discern resemblances to the open price form of activity.

Members have now made considerable headway toward becoming more free as agents. Business is no longer apportioned nor production regulated by means of agreement. Penalties are no longer exacted. There are no agreements in writing. Members are no longer required to submit affidavits with their reports. Voting at meetings to determine how members shall conduct their business operations is abandoned.¹⁰ Members continue to make reports every month of their production, orders, and shipments,¹¹ but the purpose in doing so is no longer that of determining what penalties or credits may be due members for exceeding or falling short of allotted quotas, but of keeping members informed as to whether they have been maintaining the same relative position in the industry that they had previously occupied.¹² It is probably fair to assume that moral obligation to abide by the percentages approximating those which were en-

⁸*Ibid.*, Vol. XV, p. 6046.

⁹*Ibid.*, pp. 6034-5.

¹⁰Langan, *Record*, Vol. II, p. 839-842; King, *Record*, Vol. VI, p. 2088.

¹¹*Ibid.*, p. 839.

¹²Temple, *Record*, Vol. XV, p. 6037.

forced by the combination had now supplanted hard and fast agreements backed up by a money penalty.

Whether at meetings members made declaration of purposes respecting their production policy is not made clear, but it is clear that each member made an announcement of prices which he expected to charge and that as a result of their deliberations each member would announce a price identical with that of every other member. Furthermore, it was generally understood that the price announced was to hold until the next meeting.¹³ Evidently strong forces were in operation, even under the statistical form of association, to prevent freedom of action.

Members of open price associations are free agents. It is quite clear that members of these statistical associations were not free agents. However we have seen that considerable progress toward freedom from restraints was made under the statistical form of association.

Owing to the strong condition of the market for iron and steel in the summer of 1907, interest in the statistical associations practically ceased and this form of association passed out of existence.¹⁴ The financial crisis very soon followed. Fearing that the demoralization spread by the panic of 1907 would also envelop the iron and steel industry unless steps were immediately taken to head it off, Mr. Gary invited the leading iron and steel producers to a dinner, the purpose being to talk over the situation with a view of determining what might be done to avert disaster.¹⁵ This was the emergency that brought the Gary dinner system into being. The system proved somewhat successful in stabilizing conditions. Therefore it was retained after the period of the emergency had passed. For a short period (1909-1910) the system temporarily broke down, only to be resumed again at the expiration of that period under the auspices of the American Iron and Steel Institute. The system remained in operation until in 1911, when the Government brought suit against the United States Steel Corporation; whereupon it was abandoned.¹⁶

¹³King, *Record*, Vol. VI, p. 2083.

¹⁴Robinson, M. H., Unpublished Manuscript, *Informal Combinations*, p. 37.

¹⁵*Ibid.*, Gary Dinner System, p. 2.

¹⁶*Ibid.*, pp. 26, 28, 41.

The advent of the Gary dinners marks the beginning of another stage of association development. In connection with the Gary dinners Mr. Gary introduced two new concepts which Mr. Eddy was to seize upon and make the very foundation stones for his system of coöperative competition. He conceived the idea, first, that systematic attempts should be made to build up a spirit of coöperation between competitors. Coöperation in business would follow if a friendly feeling could be developed between competitors. A feeling of friendship could best be developed by arranging for frequent gatherings. The second thought was that competitors should be induced to exchange information between each other, freely, and frankly. In the words of Mr. Gary, the purposes served by the Gary dinners were "thoroly establishing, if possible, a friendly feeling amongst the steel makers, and of inducing, if possible, the manufacturers to state frankly and freely what they were doing, how much business they were doing, what prices they were charging, how much wages they were paying their men, and oftentimes what their methods were, and in fact furnishing frankly to the others all information concerning their business, to maintain as far as practicable the stability of business and to prevent by exhortation the wide and sudden fluctuation of prices which would be injurious to everyone interested in the business of the iron and steel manufacturers."¹⁷

Mr. Gary well recognized that in order to make effective his ideas of building up, first, the coöperative spirit; second, the sentiment of mutual helpfulness to be manifested in a free and frank exchange of information, it would be necessary to do more than provide for an occasional dinner. The size of the industry would not permit of more than the leaders of each line of trade being present at these dinners. It was imperative that each line of product be organized in such fashion as to provide for the frequent exchange of information and the growth of friendly feeling among competitors.¹⁸ The method devised was to appoint a general committee of five who were clothed with authority to select a number of sub-committees to represent the

¹⁷Gary, *Record*, Vol. XII, p. 4889.

¹⁸See Robinson, M. H., Unpublished Manuscript, *Gary Dinners*, p. 5.

important branches of the iron and steel industry. This action was voted at the first Gary dinner. The sub-committees selected represented the following lines of products: ore and pig iron, rails and billets, structural materials, plates, steel bars, pipes and tubular goods, sheets and plates, wire products.¹⁹

The general committee was of value in coördinating the work of and stimulating to action the members of the several sub-committees. The latter may be regarded as the successors of the so-called Statistical Associations.²⁰ Their program, however, was a larger one. They were committed to the additional task, first, of building up an esprit de corps among competitors making for coöperation; second, of broadening the sphere of coöperative activity in the direction of a more frank, free and comprehensive exchange of business information. The way was rapidly being prepared for the advent of the open price stage of development.

Mr. Gary not only pointed the way by preaching coöperation and by creating the organization by which it might be translated into action, but as the president of the United States Steel Corporation, he tremendously abetted the movement by practising what he preached, as the following will indicate:

Q. "Mr. Smith, has the existence of the United States Steel Corporation had any effect, good or bad, upon your business?"

A. "Before the formation of the Steel Corporation business ethics, I might say, were in very bad shape, competitors had no confidence in each other; they resorted to subterfuges, misrepresentations, and false statements. The same lack of confidence existed between sellers and many purchasing agents. It was a very undesirable condition in which to do business. For the past seven or ten years—in later times, at any rate—all of that misunderstanding or misgiving has been replaced by manly, straightforward dealings."

Q. "To what extent do you think the Steel Corporation has brought about that change?" A. "I do not think it could have been brought about without their influence and example."

Q. "Now what is the difference, if any, in the attitude of competitors in your line toward one another from the condition that

¹⁹*Ibid.*, pp. 6, 7.

²⁰*Ibid.*, p. 7.

prevailed say fifteen years ago?" A. "We are honestly friends now. Then we pretended to be friends, but were the bitterest enemies."²¹

Just what the Steel Corporation did to build up this friendly spirit is revealed in Mr. Gary's testimony:

"We have kept competitors, employes, and customers well informed in regard to our general business affairs. Of course I do not mean to say that we always allowed everyone to know of our negotiations concerning contracts and things of that kind that might interfere with the regularity or success of our business in detail, but so far as our policies and principles and general conduct and results and methods are concerned, we have endeavored to keep the public informed."²²

Altho Mr. Gary's teachings and example had their ultimate influence, the immediate results were not gratifying. Very soon after the initiation of the Gary system it became plain that competitors were not willing to show the same degree of frankness and faithfulness to Mr. Gary in reporting changes in their business methods, as he was doing to them. Testifying on this matter, Mr. Gary said:

"We decided not to meet and give others information as to exactly what we were doing,²³ what our orders were, and where they were, or any information about our business. Conditions had changed. This step was forced upon the corporation. Others did the same. * * * * * We had prevented demoralization; we had, by our business friendship and our coming close together and keeping one another posted, prevented the wide and sudden fluctuation which I particularly was attempting to prevent. But there had been changes from time to time and sales made below the advertised prices—what are considered the trade paper prices—but nevertheless I believed it was good business and good morals to continue to furnish the information which we had been furnishing from time to time until we reached the period when it was perfectly evident that there was a disposition on the part of everyone outside of ourselves to do just exactly

²¹Smith, C. C., *Record*, Vol. XX, pp. 8067-8068.

²²Gary, *Record*, Vol. XII, p. 4917.

²³This happened early in 1909.

as he pleased; that is, to publish one price and sell at another, to sell far below the prices that were supposed to exist without notifying us. When competitors were making radical changes in prices below their published prices they ought in fairness to notify the rest and especially to notify us, because we were notifying them always. They were not obligated to do it except as two men who profess to be friends, or professing to give information to one another as to what they were doing, naturally ought to tell the truth about it.”²⁴

Mr. Gary’s announcement to his competitors that he would no longer coöperate with them caused the temporary abandonment in 1909 of all association activity. No further meetings were held and the committees were disbanded.²⁵

It is well to point out in this connection that the breakdown of Gary’s coöperative plan cannot be regarded as an augury of the probable ultimate failure of the open price plan. Under the open price plan there is no discussion of future prices, nor is any attempt made on the part of members to come to an understanding, express or tacit, respecting the course of future prices. Testimony taken in the steel case makes it clear that iron and steel producers conceived coöperation to be synonymous with a united effort to maintain prices. In 1908, Mr. Bope wrote to the directors of the Carnegie Company as follows:

“One concern that has been reported as ‘coöperating’ with us in the price policy has been persistently and consistently doing the other thing, taking business at any kind of prices they could get; * * * * * that in the bar end of our business we are meeting competition today that is just knocking everything in the head. The bar situation is the weakest feature of the whole price policy.”²⁶ Testifying as to what transpired at the group meetings held under the auspices of the various sub-committees, Mr. Crawford said:

“There would be a general understanding that we would do what we would say we would do—quote a certain figure until we found reason to change it; and if we found reason to change

²⁴Gary, *Record*, Vol. XII, p. 4902.

²⁵Robinson, M. H., Unpublished Manuscript, *Gary Dinner System*, p. 26.

²⁶Mr. Bope to the directors, *Record*, Govt. Exh., Vol. 2, p. 520.

it we would notify our competitors, or talk with them about it, when another meeting would be held and conditions discussed.

"A price would always be suggested. The statement was unanimous in every case on the part of all that they would quote a certain price. The matter of price cutting would be brought up and discussed and that discussion would end it; because there was nothing to do in case there was.

"We would say, 'We will quote a certain price until we find reason to change it.' Then would leave with the same understanding that each was going to sell at that price. The effect was to keep a steady price. There were some fluctuations. The understanding after these prices were announced was that there was a moral obligation to sell at that price until competitors were notified."²⁷

The Gary system failed at this juncture because market conditions led to more and more price cutting on the part of those who felt obliged to disregard their "moral obligations". It ceased to operate when it no longer was able to control the price situation, constituting proof sufficient that members understood it to be a plan for maintaining prices by joint effort. In contrast to this, prospective members of open price associations are made to understand that the open price plan has no place for agreements or understandings of any kind. They join knowing that they are expected to quote any prices that they may see fit to quote. The open price association is therefore not liable to be disrupted because of broken price understandings, for such agreements not only do not exist but are positively discounted.²⁸

Beginning in the latter part of 1909, Mr. Gary thought the time ripe to attempt a resumption of his coöperative activities. The newly organized Iron and Steel Institute, modelled on the lines of the British Iron and Steel Institute, became the new center of operations. Plans were going forward looking toward the effective organization of the industry on "coöperative lines" when in 1911 the Government launched its attack upon the United

²⁷Crawford, *Record*, Vol. XV, p. 1777.

²⁸*Constitution*, Society of Manufacturing Confectioners and other constitutions of open price associations; also Eddy, *New Competition*, pp. 122, 124.

States Steel Corporation. In view of this circumstance it was deemed best to discontinue the coöperative movement.²⁹

This stage of association activity, however, was promptly succeeded by the open price system. Mr. Eddy, having made a specialty of the study of law as it pertained to the various forms of combination, became a close student of the methods pursued by Mr. Gary in the iron and steel industry.³⁰ He was quick to see the merits of coöperation as preached by Mr. Gary provided it could be directed in such a way as to result in no violation of the law. In studying this aspect of the situation he conceived the idea that there could be nothing illegal in permitting competitors to exchange information dealing with past transactions. His observation of the workings of the Gary system convinced him that understandings in violation of law inevitably followed upon the heels of discussions devoted to a consideration of future prices, but discussions of prices that were already being charged or quoted could never be construed in the nature of understandings in contravention of the law, he thought.³¹ Around this idea as a pivotal point he built up the system known as the open price plan. The principal elements of the plan, a reporting system, an open, free, and frank exchange of information between competitors and an appreciation of the worth of friendliness between competitors already lay at his hand, contributed, as they had been, by systems of associated activity that had gone before. It remained for Mr. Eddy to knit them together, weaving into the fabric this new strand of thought of his, namely, that the exchange of information must be limited to transactions that are of the past.³²

An examination of the list of associations reputed to be doing open price work found in the appendix leads one to feel justified in making the assumption that an open price association is now in existence in almost every line of product formerly controlled

²⁹Robinson, M. H., Unpublished Manuscript, *Gary Dinner System*, p. 41.

³⁰See Eddy, A. J., *The Law of Combinations*, Chicago, 1901.

³¹Eddy, *New Competition*, p. 119. Mr. Eddy quotes from bill filed in case of U. S. vs. U. S. Steel Corporation as follows: "It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or a combination in restraint of trade." See also p. 121.

³²See ch. 8 for legal discussion.

by the sub-committees in operation under the Gary system. If this be true, it is a development of some significance. Of course the fact that the subsidiary companies of the United States Steel Corporation are not members of any of the open price associations detracts from the importance of the movement. However, the methods and operations of the Steel Corporation have always been more or less open, so that the independents, all of whom are members of open price associations, can probably reduce the operations of the Steel Corporation to a calculable basis, thereby offsetting, somewhat, the handicap of having a corporation as large as this outside the ranks of membership.

The American Iron and Steel Institute has continued to be the central organ of the industry. Under its auspices two general meetings are held each year, at which technical papers are read and discussed. The institute also collects the statistics of tonnage production of pig iron, steel ingots, finished rolled iron and steel products, et cetera. No statistics of prices are gathered. From time to time the Institute publishes a book known as the *Directory of Iron and Steel Works of the United States and Canada*, describing the various iron and steel companies and their plants.³³

Those who have studied the association movement among iron and steel producers naturally wonder how successfully they are adhering to those principles of the open price system which dictate that competitive methods are to be free and open, untrammelled by associated action. Having learned that the price fixing virus has been inoculated in years gone by, it is manifestly of interest to know how the open price plan is managing to combat the effects of this virus. The movement is too much in its infancy to permit of any expression in elucidation of this point. Naturally, too, this is a matter on which it is very difficult to obtain data.

³³Letter from H. H. Cook, American Iron and Steel Institute, Jan. 17, 1921.

CHAPTER III

THE EDDY THEORY AND PLAN OF NEW COMPETITION

Very little theory has been developed in support of the open price plan. Three of the most fundamental concepts associated with the plan, namely, first, publicity in the transaction of business; second, interchange of business information among competitors, and third, the development of a spirit of confidence and trust between sellers themselves and between sellers and buyers, were being put into practise by Mr. Gary in the iron and steel industry several years before Mr. Eddy published anything on the subject. However, Mr. Gary, as far as is known, has contributed no theories pertaining to the plan.

Only Mr. Eddy appears to have contributed anything in the way of theory. Such addresses or articles as others have published are practically without exception a rehash of the ideas presented by Mr. Eddy. But even the work of Mr. Eddy scarcely deserves to be designated as a theoretical contribution.¹ The purpose of his book, apparently, has been to win converts to his plan, by presenting the plan in a popular way, calculated to catch the eye of the ordinary business man.

Naturally, before plunging into an exposition of his theory, he undertakes to denounce the kind of competition now extant.² This competition, the "old competition", as he calls it, is fierce, brutal, ruthless, destructive, and wasteful. It is the law of the survival of the strongest applied to the commercial and industrial relationships of man, a law by which the stronger, by fair means or foul, overcome the weaker in commercial combat. He decries the existence of a competition which seems only to foster the feeling among business men that in order to be successful

¹Eddy, A. J., *New Competition*, N. Y., 1912. Mr. Eddy was a practising attorney.

²*Ibid.*, pp. 1-37.

they must ruin their competitors. Fitness does not seem to insure survival. To take just one example, many a contractor who is rendering satisfactory service finds himself bidding against others of his class for the custom of a single person or group of persons acting as a unit. Ignorant of the terms being made by competitors, it becomes easy for the individual or group whose custom is being bid for to play one off against the other by misrepresenting to each in turn the terms which have been made by others. The result is that bids are often made which do not cover costs. Inevitably men are forced out of business whose services society needs. They are often the very ones who are the most valuable to society because of their honesty in business practises. The more unscrupulous competitors succeed in surviving by resorting to poor workmanship, adulteration, and skimping on specifications.

One of the worst by-products of the old competition, according to Eddy, is the secrecy existing between each competitor. Ignorant of what his competitors are doing, he bids against his "own fears and necessities."³ The result of this state of secrecy together with the state of industrial warfare that is associated with it is to fill the world with suspicion. Labor distrusts capital; the distributor distrusts the producer, the producers distrust each other, and the consumer distrusts them all.

It is not necessary to do more than call attention to the line of thought that Mr. Eddy has here pursued. For a long time economists have been cognizant of the fact that the competition that they have regarded as ideal, characterized by an open market, with numerous buyers and numerous sellers, each conscious of the bids and offers of the others, is not the kind of competition that is actually faced by the business man.⁴

When the business man has attempted to avoid the disastrous consequences of actual competitive conditions by means of combinations, consolidations, and association activities, the jurists and legislators have felt it incumbent upon them to force them back into the old conditions. This is a case of outright dis-

³Eddy, *New Competition*, p. 92.

⁴Johnson, A. S., "Review of *New Competition*", *Pol. Sc. Quar.*, Mar. 1913, p. 142.

crimination against the business man, contends Mr. Eddy. He points out that farmers' organizations to control the production and marketing of their products are countenanced by the courts, as are labor unions, which exist chiefly to control wages.⁵

"The country has reached the parting of the ways," he goes on to say. "It must make its choice, and make it intelligently—either the competitive or coöperative basis. If the competitive, then no class should be permitted to organize a coöperative movement to get more for what it has to sell; if the coöperative basis, then no class should be prevented from organizing—either one policy or the other; the two cannot exist together. The man who argues for competition must be consistent; he must argue against farmers' coöperative societies and labor unions just as vehemently as he argues against combinations of dealers and manufacturers."⁶

After thus pointing out that "the old order must give place to the new" and that judicial opinion and public sentiment is beginning to show signs of a more tolerant spirit toward coöperative efforts among business men, Mr. Eddy is ready to launch into an exposition of what he terms the "true competition", or the "new competition", which he predicts will very soon supplant the old competition. "True competition," expressed in his words, "exists only where there are two or more competitors competing under conditions that enable each to know and fairly judge what the others are doing. The essence of competition lies in the element of knowledge; it is real, true, and beneficial in proportion to its openness and frankness, its freedom from secrecy and underhand methods."⁷

This constitutes a statement of his theory. In substance the only amplification that he makes of this statement is to point out what he thinks will be the important effects of competition carried on under open conditions, all competitors being possessed of full knowledge. In the first place, prices will be stabilized, he thinks, and his main reason for thinking so, apparently, is that every competitor will "refrain instinctively from cutting

⁵Eddy, *New Competition*, see ch. 19.

⁶*Ibid.*, p. 35.

⁷Eddy, *New Competition*, p. 82.

because he knows if one cuts all will", in as much as "the industry has probably been through more than one disastrous trade war and is ever on the verge of another."⁸ In the second place, the absence of secrecy will eliminate the evils attending the old competitive regime. Distrust that pervades every class from producers to consumers will give way to friendliness and trust. Since dealings are no longer in secret, they will not be attended by fraud and misrepresentation.⁹

Mr. Eddy thus states what he deems will be the main effects of his theory, but he does not explain why "true competition exists only where there are two or more competitors competing under conditions that enable each to know and fairly judge what the others are doing." Knowledge is the essence of competition, he declares, but he gives no reasons for so thinking. After making the statement of his theory he immediately proceeds, as has been noted, to consider the probable effects resulting from the acceptance and application of the theory. This being accomplished, he is ready to suggest plans for putting this theory into practise.

Before turning to a consideration of these plans, it may be in order to assert that in the opinion of the writer the statement of theory as made by Mr. Eddy contains in itself nothing essentially new to the science of economics. Economists have long recognized that innumerable elements of friction are ever present under actual competitive conditions to prevent the law of supply and demand from functioning as it would if they were not present. Ignorance has been recognized as one of the deterrents to an approach to a condition of free competition.¹⁰ In fact, economists, in formulating the law of supply and demand which lies at the basis of commercial competition, have made the explicit reservation that the law only holds if it is assumed that all parties are intelligent enough to know their own interest, and are able and willing to act thereon.¹¹ Obviously they will not know

⁸*Ibid.*, p. 101. For a discussion of the effect of open price activity on prices see ch. 9.

⁹For a discussion of the advantages of the open price plan see ch. 6.

¹⁰In every case where the term "competition" is used, the meaning is "commercial competition." See Taussig, F. W., *Principles of Economics*, Vol. I, p. 149.

¹¹See Palgrave, *Dictionary of Political Economy on "Competition,"* Vol. I, pp. 376-380.

their own interest if they are not acquainted with all the conditions affecting the supply of and the demand for the particular product in which interest is centered. Ignorance of business conditions is admittedly so prevalent among business men of the ordinary type as to render them incapable of acting intelligently in their own interest.

Perhaps the reason why knowledge is the essence of competition may be made clear by the following: A knowledge on the part of sellers and buyers of their own interest, implying, as it does, a knowledge of all conditions that might have a bearing on the supply of, and the demand for, a given commodity, together with the ability and willingness to intelligently act thereon, would result, according to the law of supply and demand, in similar exchanges taking place on similar terms, or to state it in terms of price, it would result in the naming of an equilibrium price "for the same unit of the same quality of the same article in the same market."¹² This stability of market conditions, which finds expression in a single price, will ensue only under the conditions named. It is attainable only in theory. But such stability can be approximated by means of systematic efforts put forth to eradicate sources of friction. Undoubtedly one of the most serious sources of friction is due to sellers and buyers lacking adequate knowledge.

The nearest approximation in real life to a stability of conditions such as is attainable theoretically seems to have been achieved in the case of those commodities which have their market made on the exchanges. The reason undoubtedly is that the machinery of these exchanges, be they stock, bond, wheat, coffee, cotton, or any other kind of exchanges, puts at the disposal of buyers and sellers an unusual amount of information bearing on competitive conditions. The higgling between buyers and sellers, based as it is, on a general knowledge of substantially all facts that have a bearing on competitive conditions, results in prices being named which vary very little from each other for given units of a given commodity of a given quality on a given exchange at a given moment of time. One only has to note the general

¹²Palgrave, *Dictionary of Political Economy on "Competition,"* Vol. I, pp. 376-380.

confusion among buyers and sellers, manifesting itself in wide "spreads" of prices, that occurs in consequence of a temporary cessation of this exchange machinery to know the importance of putting buyers and sellers in a position where they can know all the facts of competition as well as act thereon.¹³

It is a matter of common observation that there is considerable variation in the prices named for identical commodities in those cases where they do not have their market made on an exchange. This is particularly true of the great class of manufactured goods. It is a fair assumption that the "spread" in prices apparent in many, if not most, lines of manufactured commodities is to a considerable degree the result of buyers and sellers possessing an inadequate knowledge of market conditions. Of course conditions may arise which would result in similar commodities selling at different prices even tho sellers and buyers are thoroly acquainted with all essential facts pertaining to market conditions. This cannot be denied; but the contention is that, other things being equal, there will be less of a "spread" in prices—meaning, of course, that ideal conditions of competition are more nearly approximated—when buyers and sellers are well informed than when they are not.

If this country is to continue to shape its destiny in a business way in accordance with the theory that the ideal philosophy of trade is competition in trade, it becomes important that means be sought looking toward a more free play of competitive forces. Perhaps the time will come when the theory of competition as laid down by the economist, now so maligned in many quarters, will find itself vindicated, provided means can be found for eliminating the more serious causes of friction that now prevent actual competitive conditions from approaching ideal competitive conditions. Undoubtedly a very serious amount of friction is occasioned by the lack of machinery for putting business men in possession of the salient facts relating to their particular lines of industry.

¹³At the outset of the war, when the New York Stock Exchange was temporarily closed, the very best of securities fluctuated violently in price. As soon as the Stock Exchange opened these violent fluctuations disappeared, and "spreads" in prices became less pronounced.

Mr. Eddy, in the opinion of the writer, should be credited with an achievement of signal worth in calling the attention of business men to the fact that there are ways of providing machinery that will enable them systematically to get at the information of inestimable value to them in diagnosing market conditions. However, he should not also be credited with developing a new theory of competition. The discovery that knowledge is the essence of competition is, as previously stated, not a new one. Mr. Eddy, however, apparently thinks that he has found a new theory of competition, when, as a matter of fact, economists have always assumed the existence of the very thing that Mr. Eddy would raise to the dignity of a new theory, namely, that sellers and buyers possess enough knowledge of the facts influencing competitive conditions to make them alive to their own interest in their capacity of bargainers.

We turn now to consider briefly the general nature of the plans that Mr. Eddy would set up as models for those who would learn how to achieve true competition. From the standpoint of theory, at least, irrespective of the practical difficulties that might arise, it would seem essential that any system devised for the purpose of securing more intelligence in competition should be sufficiently comprehensive to take in buyers as well as sellers. It is assumed that in the ideal kind of competition, *all* parties are sufficiently intelligent to know their own interests. However, if one class is in possession of all the salient facts of competition and the other is not, it is safe to assume that the one will have an undue advantage over the other in bargaining. In other words, true competition will not prevail.

In the statement of his theory Mr. Eddy seems to have the seller primarily in mind. He says that "true competition exists only where there are two or more competitors¹⁴ competing under conditions that enable each to know and fairly judge what the others are doing.¹⁵ To have true competition, it is necessary that not only sellers be informed, but that also buyers be informed.

¹⁴This term may be applied to purchasers who are competing against each other in making purchases of goods, but Mr. Eddy undoubtedly uses the term in its more commonly accepted meaning of denoting sellers in competition with each other for the custom of the buyer.

¹⁵Eddy, *New Competition*, p. 82.

To be sure, Mr. Eddy does make reference to one plan in which connection the "goal to be kept in mind is a Central Exchange, so open, so public, that labor, employers, customers will resort to it for information regarding work, wages, prices, and all conditions affecting every trade and industry represented." Under this plan, apparently, every town is to have its Industrial Exchange, a place of meeting for all trades, and every contractor in all lines of work is to be a member. The exchange that Mr. Eddy here has in mind is apparently to be mainly for the use of those who are engaged in the various building and allied trades. Nothing is said as to the place that buyers and sellers of manufactured goods are to occupy in these exchanges. Apparently Mr. Eddy has little faith in the practicability of this plan for it is given only a passing reference in a passage leading up to the real plan that he has in mind.¹⁶

This plan which has come to be known as the open price plan¹⁷ is devised almost entirely from the point of view of the seller. In fact one of the principal inducements for trying out the plan, as Mr. Eddy states, is to prevent buyers from misrepresenting prices that are being currently quoted.¹⁸ He also suggests that the plan will put purchaser and seller more nearly "on a footing of equality."¹⁹ An outline of the steps that should be taken by the manufacturer in organizing an open price association is given.²⁰ The purchaser has no part to play in the organization. Purchasers are to be permitted to attend meetings, but nothing is said about permitting them to have a part in the reporting system. The suggestion is made that purchasers organize their own open price associations, but obviously the trade statistics that they could obtain for themselves would be very limited in scope. They could compare prices paid for purchases, but they could not obtain statistics pertaining to such vital matters as amount and character of production, size, character, and location of stocks of commodities, et cetera. These statistics could

¹⁶Eddy, *New Competition*, pp. 101-104.

¹⁷For a description of the typical Eddy plan, see ch. 5, pp. 71-72.

¹⁸Eddy, *New Competition*, p. 145.

¹⁹*Ibid.*, p. 145.

²⁰*Ibid.*, pp. 124-136.

be obtained only from the producers themselves. It is plain that the machinery of the open price plan does not put all the facts of competition before both the buyer and the seller in the impartial way in which it is done, for example, on the various commodity exchanges. As long as all parties concerned are not in possession of all the facts relating to the competitive market, exchanges cannot be made on the terms contemplated by the law of free competition.

Mr. Eddy's plan, then, failing as it does, to provide a system whereby both buyers and sellers may be put in possession of all necessary information to make them intelligent bargainers, cannot be regarded as a complete solution to the problem of securing full and free competition in the transaction of business. The plan is meritorious, however, in so far as it points to the direction, perhaps, in which may be found a solution. Mr. Eddy was above all things a practical minded man, intent on proposing a practical plan which might give redress to the manufacturer who, he undoubtedly felt, was not on an equal footing with the purchaser in bargaining power. However, he leaves the impression with the reader that his plan will achieve a larger result than merely to give redress to one industrial class. It is heralded as a plan which will lead to true competition.

CHAPTER IV

STRUCTURAL FEATURES OF THE OPEN PRICE ASSOCIATION

ORGANIC ORIGIN

With very few exceptions the prevalent type of open price association is the voluntary association type. The incorporated type has been observed to exist among a few of the lumber manufacturers' associations.¹ Only one of these, namely, the Southern Pine Association, was organized to do open price work; the others have made it an adjunct of their other activities.

The Southern Pine Association, in adopting the form of association that it did, was actuated chiefly by legal motives. Even tho it has ceased to function as an open price association, it is interesting to recount the circumstances attending the organization of this association,² because here is recorded one of the first attempts made to avoid the alleged weaknesses of the voluntary form of association. It was in 1914 that this association came into existence as a result of the reorganization of the old Yellow Pine Association, the latter having been dissolved and many members heavily fined by decree of the Supreme Court of Missouri in consequence of a conspiracy to boost prices.³ The old association had been a voluntary one. Its disastrous experience with the courts made it clear that under this form of association any member might be held bound by the acts or comments, public or private, of every other member. Under such circumstances as these there would not be much inducement for yellow pine manufacturers to again join hands as members of a voluntary association. Neither was it likely that state authorities,

¹Southern Pine Assn.; West Coast Lumbermen's Assn.; California White & Sugar Pine Manufacturers' Assn.

²Price reporting was abandoned when suit was brought against the American Hardwood Manufacturers' Assn.

³*American Lumberman*, Dec. 20, 1913.

particularly those of Missouri, would view with any degree of equanimity any efforts that might be made to resuscitate the old form of organization. Faced as they were by this two-horned dilemma, the leaders among the yellow pine manufacturers hit upon the corporate form of organization as a welcome solution to their problem. Under the corporate form there would be no members from the legal point of view. A corporation would be organized to sell information to subscribers in a manner similar to that done by Bradstreet's or Dun's. Instead of having members, it would have subscribers who would enter into a contract with the corporation for such service as the corporation might be authorized under its charter and by-laws to furnish. Meetings of subscribers would be held at various times and places to make recommendations to the directors, who would act upon them only if the action recommended came within the law. The subscribers' meetings would be in effect voluntary organizations, whose will and wishes the corporate directors would follow so far as the law permitted.⁴

It was contended by counsel,⁵ as previously intimated, that the act of one subscriber would not bind any other subscriber. Neither would any act of the corporation—the association itself—bind the subscriber. Furthermore the legality of the plan, it was contended, would be tested in advance. After filing the articles of incorporation with the Secretary of State, they would be brought to the notice of the Attorney General in order that he might advise against their certification if he found them in conflict with the law. One other leading argument in favor of the corporate form had to do with the placing of responsibility with those who subscribed. Under the voluntary form there were, it was contended, no adequate means of getting members to live up to their obligations. Under the corporate form, however, subscribers would sign contracts which would be legal, binding, and enforceable. There could be no voluntary withdrawal, the contract running its full term to the date of expiration, during which time the subscriber would be bound, legally as well as

⁴Cf., *American Lumberman*, Dec. 12, 1914.

⁵Argument of Judge Lucas before meeting of Yellow Pine manufacturers. See *American Lumberman*, Dec. 12, 1914.

morally, to all obligations assumed by him therein. Among other things, promptness in reporting necessary business information would be insured, as would the necessary financial support needed to carry out the purposes of the corporation.

These arguments are passed on to the reader for what they are worth. They involve primarily questions of law which in time will be passed upon by the courts. Undoubtedly one of the serious weaknesses of the voluntary type is the lax manner in which members carry their responsibilities. The infliction of penalties for infractions of rules, such as is provided for by the corporate form of association, is a business like way of coping with this difficulty, say the advocates of this plan.⁶ Advocates of the voluntary type, however, maintain that the infliction of penalties is out of harmony with the very purpose of the open price association, in that it tends to tear down the very thing that the open price plan aims to build up, namely, a mutual spirit of friendliness, confidence, and trust between members.

The infliction of penalties is at best a crude means of securing a minimum degree of coöperation from those who in the absence of this provision would perhaps disregard their obligations entirely. Possibly a stage of ethical development among business men has not yet been reached which will permit of their relations with one another being left entirely to the field of honor. Practically all of the voluntary type of open price associations have found it necessary to compromise with their principles to the extent of inflicting a penalty of a kind, at least, upon members who fail to furnish the information called for by the secretary. The simple rule adopted is that those who do not contribute information shall not be entitled to receive any.⁷

The writer is inclined to the point of view that the "loose" form of association characteristic of the Eddy type is the preferable kind. It is characteristic of human nature to rebel against

⁶The Armstrong Bureau of Related Industries, Chicago, Illinois, is organized as a corporation to do open price work for manufacturers who become subscribers. In this case a bond deposit is required as a guarantee of faithful performance of all terms. For an explanation of this system see Montague Ferry, *Intelligent Selfishness*, Chicago, 1919, ch. 6.

⁷For a further discussion of the weaknesses of open price associations see ch. 6.

restriction or restraint. The imposition of prohibitions usually generates a desire to circumvent them.

With respect to the relative immunity of the two types from visitations of the law, perhaps the only safe statement that a layman can make is that the courts will seek to punish those who are guilty of violations of the law regardless of the form of association that may have been adopted.

Irrespective of whether they belong to the corporate or the voluntary type of association, all open price associations may be grouped according to the following classification: they have either been organized as open price associations, or they have come into existence as an outgrowth of a trade association, or they have had their functions assumed by trade associations as a departmental activity.⁸ Most of the associations that were organized by Mr. Eddy would belong to the first group. Prominent examples of the second group are furnished by the Southern Pine Association and the American Hardwood Manufacturers' Association. Most of the other lumber manufacturers' associations belong to the third group.⁹

In general it may be said that the associations which belong to the third group show all manner of differences in the character and scope of their open price activities. This is naturally explained by reason of the fact that having retained their identity as trade associations, they have adopted only such phases of open price activity as have seemed to offer a solution for problems which the old type of organization has been unable to handle. The one element of open price work that all the associations of this group have adopted in common is price reporting. With some this is as far as the semblance to the Eddy type of association goes. Others arrange for the sporadic exchange of information among members, and still others may have a regular and definite system of exchanging information of a limited character. Seldom, if ever, will it be found that an association be-

⁸A similar classification is made by H. R. Tosdal in his article on "Open Price Associations" which appeared in the *American Economic Review* for June, 1917. See p. 336.

⁹Examples of the third group are: National Box Manufacturers' Assn.; National Cannery Assn.; National Association of Brass Manufacturers; National Machine Tool Builders' Assn.; the various associations of millers, etc.

reports with every one of the other bureaus.¹¹ The Associated Metal Lath Manufacturers also have a similar method of relaying information from local bureaus to a central office.¹²

Where membership is spread over a wide area it is usually found necessary to provide for group meetings. For this purpose the Leather Belting Exchange divides its membership into two groups—one comprising the manufacturers of the West and the other those of the East. The western group meets in Chicago each month and the eastern group in New York one week after the Chicago meeting, thus enabling the secretary to be present at both meetings and coördinate the work done. Further coördination of the work of the two groups is obtained by holding a joint meeting every three months. These are held alternately at New York and Chicago.¹³ The American Hardwood Manufacturers' Association has conducted four monthly group meetings, these being held at Cincinnati, Ohio; Memphis, Tennessee; New Orleans, Louisiana; and Jackson, Mississippi. Once a year all the groups have come together in a convention.¹⁴

Because it is to the advantage of an open price association to have as many members as possible and because restrictions would be out of harmony with the open price plan, it is found that restrictions upon membership are practically non-existent. Membership is ordinarily open to any firm, corporation, or individual in good standing engaged in the particular line of business involved, provided agreement is made, first, to comply with the provisions of the constitution and by-laws; second, to pay the required fees and dues. However, it is usually specified that only those who are engaged in the manufacture of the product in which the association is interested are eligible. In this connection at least two associations would permit others than manufacturers to become members under certain restrictions not enforced upon

¹¹*The Black Diamond*, "How the National Association Reports Sales," Oct. 11, 1919, pp. 322-324.

¹²*Annual Official Program*, New England Builders' Supply Association, Boston, 1917, p. 43.

¹³Spaulding, W. V., *Experiences in Coöperative Competition*, p. 5. An address delivered before the Babson Conference, Sept. 15, 1915.

¹⁴*Sales Report of A. R. Gadd, Record*, American Column and Lumber Co. vs. U. S., Vol. II, p. 1067.

longing to this group has anything like the complete system for exchanging information among members that is characteristic of the Eddy type. It goes without saying that the associations belonging to the first two groups, having been specifically organized to do open price work, are usually patterned after the Eddy type of association.

MEMBERSHIP

In order to get the best results out of their coöperative activities, open price associations endeavor to gather within their fold all competitors who are engaged in the various lines which these associations would aspire to control. It will therefore be found, that in so far as the industry is localized, the membership of these associations will be localized. In so far as the territorial distribution of the industry is a national one, membership will be spread over a wide area. No members of the National Association of the Finishers of Cotton Fabrics, for example, will be found anywhere but in the East, for the industry is localized there. On the other hand membership in the Leather Belting Exchange, for example, is distributed over a wide area, as is that of the American Hardwood Manufacturers' Association or the National Coal Association.

The territory should undoubtedly be limited sufficiently to permit of a ready exchange of information and meetings of members at frequent intervals. Where the industry is such that membership must necessarily cover a wide area local exchanges may be provided for, as in the case of the National Coal Association. Before price reporting was discontinued by this association,¹⁰ four exchanges were maintained in all — one in Washington, D. C., one in Chicago, one in Cincinnati, and one in Pittsburgh. The work of these exchanges, or "bureaus", as they are called in the coal industry, was directed from the national headquarters at Washington. Instead of making their reports to one central agency for the industry, operators would send them through their local associations to the nearest local bureau. Each local bureau in turn would exchange its compiled

¹⁰July, 1920.

the others. The Ohio Millers' State Association permits any manufacturer of flour or meal to become a "regular" member of the association and other persons, firms, and corporations may be admitted and become "associate" members, and may have all the privileges of regular members, except voting.¹⁵ The Knit Goods Manufacturers of America also provides for regular and associate members. The regular members are to be those who participate in the reporting plan.¹⁶ The associate members are divisible into two classes. One class consists of manufacturers who do not participate in open price work; the other class consists of sales agents or commission houses which sell knit goods, and this class is to have no vote in the management of the association.¹⁷ It is evident that manufacturers, even in the few cases where they permit others than members of their own class to come into the association, are careful to see that no control of management shall fall into any other hands than their own.

The rules determining the manner in which members shall be voted into the association vary considerably. The most common practise seems to be to require the affirmative vote of the majority of members present at regular meeting.¹⁸ The Tap and Dye Institute requires the affirmative vote of three-fourths of the members present.¹⁹ The Society of Manufacturing Confectioners requires the approval of the executive committee followed by the majority vote of members present in regular meeting.²⁰ The American Hardwood Manufacturers' Association merely requires a majority vote of the Board of Directors;²¹ the Salt Producers' Association a majority vote of the executive committee.²² The American Tack Manufacturers' Association requires unanimous election.²³

¹⁵*Constitution*, Art. 3, Sec. 1, 2.

¹⁶*Constitution*, Art. 4.

¹⁷*Ibid.*, Art. 5, Sec. 1.

¹⁸For instance, the Ohio Millers' State Assn.; National Coal Assn.; Leather Belting Exchange; Steel Barrel Manufacturers' Assn.

¹⁹*Constitution*, Art. 3, Sec. 2.

²⁰*Constitution*, Art. 4, Sec. 2.

²¹*Constitution*, Art. 3, Sec. 2.

²²*Constitution*, Art. 3.

²³Tosdal, H. R., "Open Price Associations", *American Economic Review*, Vol. VII, No. 2, p. 339.

Provisions are usually inserted in the constitution indicating under what circumstances members may be expelled. The usual provision is that they may be expelled "for good and sufficient reasons" by a vote of the members, a majority or three-fourths vote usually being required. The more common reasons for expulsion are the non-payment of dues, and breach of the constitution and by-laws. Some associations make members liable to expulsion for filing misleading information.²⁴

Expenses incurred in the operation of open price associations are usually defrayed by membership dues and the levy of special assessments. In addition some associations require the payment of an initiation fee. The Salt Producers' Association has an initiation fee of \$200.00, the Pressed Metal Association \$50.00, the Tap and Dye Institute \$100.00, and the Hardwood Manufacturers' Association \$25.00.²⁵ In exacting payments for dues, most associations apparently go on the theory that members derive benefits from the work of the association in proportion to the volume of their business. Practically all of them base their dues and special assessments on a capacity, production, shipments, or sales basis. Regular members of the Ohio State Millers' Association pay dues annually in advance based upon the daily capacity of each mill owned or operated by each member.²⁶ The common practise in the lumber industry is to base dues on the number of feet of logs cut annually. Manufacturers belonging to the Hardwood Manufacturers' Association, for example, pay dues in twelve monthly installments, based on an assessment "at the rate of not to exceed five cents per thousand feet log scale, with a maximum of \$2000.00 per annum, based on the number of feet of hardwood logs cut for the preceding calendar year."²⁷ All assessments levied by the Salt Producers' Association are on the basis of output.²⁸ The same is true of the National Coal Associa-

²⁴Society of Manufacturing Confectioners, *Constitution*, Art. 7. Sec. 8; Tap & Dye Institute, *By-Laws*, Sec. 5.

²⁵Tosdal, H. R., "Open Price Associations" *Economic Review*, Vol. VII, No. 2, p. 339.

²⁶*Constitution*, Art. 6, Sec. 1.

²⁷*Constitution*, Art. 5, Sec. 1. See *Record*, American Column & Lumber Co. vs. U. S., Vol. 1, p. 73.

²⁸*Constitution*, Art. 5.

tion.²⁹ The National Chair Manufacturers' Association bases its dues on the volume of shipments. The Tap and Die Institute and the Steel Barrel Manufacturers' Association and the Society of Manufacturing Confectioners base their dues on the amount of sales.³⁰

Obviously there is a disadvantage which militates against the proper financing of the work of an association in having dues based upon the amount of business done. Those in control cannot be sure of obtaining stated amounts of money from year to year. It is therefore rendered difficult to plan a program of financial expenditure that will not overreach or underreach the size of the fund that is available at any given time. When business is poor, the income from dues is small, and the consequence often is that operations must be curtailed. Of course this objection loses force when those in control are sagacious enough to reserve for the lean years surplus funds that have been collected during the fat years.

Members as a class have as their chief duties, aside from the payment of dues, first, to furnish information to the central office, second, to attend meetings. Their chief privileges are to vote at meetings and to receive such information as the secretary may circulate among them. Usually the rule is that unless members are willing to furnish information, they receive none.

OFFICERS

The list of officers of an open price association differs in no essential particulars from that which is found in any formal type of association. These officers are a president, vice-president, secretary, treasurer, and an executive committee or a board of directors. The Ohio Millers' State Association has both a board of directors and an executive committee.³¹ Such an arrangement is not often found. In the lumber industry provision is also made for several vice-presidents.³² The typical Eddy association, however, seldom has more than one vice-president.

²⁹*Constitution*, Art. 5.

³⁰*Constitutions*, Art. 6; Art. 5; Art. 7; Sec. 9.

³¹*Constitution*, Art. 4.

³²American Hardwood Manufacturers' Assn., *Constitution*, Art. 8, *Record*, Vol. I, p. 75.

The president is usually elected annually by a majority vote of the membership. He is practically always a man active in the line of business that the association represents. In fact, the constitution of the Leather Belting Exchange specifically states that the "President shall be a member of the Exchange, and engaged in the manufacture of leather belting."³³ He performs the usual duties of the chief executive officer. In most constitutions they are not minutely specified. They may be summed up as follows: to preside at all meetings, including those of the executive committee; to appoint all committees not provided for in some other way; call meetings of the executive committee, and special meetings of the association upon written request of a certain number of members, as well as call meetings of all permanent and special committees. He is generally an ex-officio member of all committees. It is usually customary for him to review the work of the year at the annual meeting.

The vice-president assumes the duties of the president during his absence.

Most constitutions provide that the treasurer and the secretary may be one and the same person. In cases where the treasurer is not also the secretary the common practise is to elect him at the annual meeting. Only in a few cases is it customary to elect a treasurer when he is also the secretary.³⁴ More often the procedure followed is that the executive committee makes an appointment subject to the approval of the membership. The constitution of the Leather Belting Exchange, in contrast to the general practise, specifies that the treasurer shall be a trust company or other banking corporation of recognized standing, and shall be appointed by the exchange.³⁵ In general it is the duty of the treasurer to collect and receive all moneys of the association, pay all orders for money when countersigned by the secretary, and keep a correct record of all receipts and disbursements. If the treasurer and the secretary are united in one person, his signature upon checks is usually considered sufficient.³⁶

³³*By-Laws*, Sec. 2.

³⁴Tap & Dye Institute, *Constitution*, Art. 1.

³⁵*By-Laws*, Sec. 4.

³⁶Society of Manufacturing Confectioners, *By-Laws*, Sec. 3; Hardwood Manufacturers' Assn., *Constitution*, Art. 9, Sec. 3.

The executive committee usually consists of one or more of the elective officers in addition to several elected members ranging anywhere from three to seven in number. The executive committee of the Tap and Die Institute is composed of the president, vice-president, and three other members elected at the annual meeting.³⁷ That of the Salt Producers' Association is composed of the president and seven elected members. Only three members comprise the executive committee of the Leather Belting Exchange.³⁸ The executive committee of the Ohio Millers' State Association is made up of the president, vice-president, treasurer, secretary, and a board of directors comprised of five elected members.³⁹ The common type of executive committee has the general power of management of the affairs of the association. Its function is to see that all of the objects and purposes of the association are carried out. Typical of the powers given to executive committees are the following: 1. call special meetings; 2. fill vacant offices until the next annual meeting; 3. retain counsel; 4. employ a secretary; 5. authorize necessary expenditures.⁴⁰ Practically always there is a provision that all acts of the executive committee must be submitted to the next regular or special meeting of the association for approval.

The office of the secretary is by far the most important cog in the machinery of the open price organization. The secretary of one open price association writes as follows: "The success of any individual organization depends entirely on the secretary and unquestionably most of the failures of the association work have been due to his ignorance of what constitutes proper coöperation and how to attain it."⁴¹ A representative of Babson's Statistical Organization who has been active in acquainting the business world with the open price form of coöperation states that a secretary should be, first, an executive officer, not merely a clerk; second, he should have business experience, education, tact, and ability to speak in public; third, he should command respect for

³⁷*Constitution*, Art. 4, Sec. 3.

³⁸*By-Laws*, Sec. 2.

³⁹*By-Laws*, Art. 1, Sec. 5.

⁴⁰Society of Manufacturing Confectioners, *Constitution*, Art. 3, Sec. 4.

⁴¹Letter from D. S. Hunter, Secretary of the Steel Barrel Manufacturers' Assn., Dec. 20, 1920.

his merits as a man; fourth, that it is not necessary that he be familiar with the line of business that the association is at work on.⁴² In addition it should be remarked that it is absolutely necessary that he be a man of integrity and dignity, for he occupies a position of confidence and trust. Because of his position of confidence and trust a provision is found in most constitutions specifying that he must have no connection or affiliation with the line of business with which the association is identified. The secretary is usually the only salaried officer of the association.

Most associations outline the duties of the secretary very minutely. Undoubtedly this is done because of the feeling of distrust that prevails among competitors who at the outset of their experiment in coöperation are in a state of mind which prompts them to throw all the safeguards that they can about themselves. Some associations require that the secretary retain in absolute secrecy all information furnished him by members, and it is often specified that when he has made proper record thereof the statements conveying the information shall be returned to their owners or be destroyed.⁴³ In one case the secretary is required to keep this information secret even from the executive committee.⁴⁴

The secretary may be either elected or appointed. Where election is the rule the electing is usually done by the association as a whole; where appointment is the rule the appointing is usually done by the executive committee subject to the approval of the association. There are exceptions to both statements, however. In the case of the Ohio Millers' State Association the secretary is elected by the executive committee.⁴⁵ In the Leather Belting Exchange the office is filled by an election conducted by the exchange.⁴⁶ The same is true of the Tap and Die Institute.⁴⁷

⁴²Address of G. E. MacIlwaine before American Specialty Manufacturers' Assn., New York *Journal of Commerce*, Dec. 11, 1916.

⁴³Leather Belting Exchange, *By-Laws*, Sec. 2.

⁴⁴The North Carolina Pine Box and Shook Manufacturers' Assn. requires that reports received from members be destroyed. See *Weekly Sales and Lumber Price Report*. The Leather Belting Exchange requires that all papers be returned to their owners. See *By-Laws*, Sec. 2.

⁴⁵*Constitution*, Art. 4, Sec. 4.

⁴⁶*By-Laws*, Sec. 4.

⁴⁷*Constitution*, Art. 4, Sec. 2.

Appointment is made by the membership in the case of the National Coal Association.⁴⁸

The duties of the secretary, as outlined by one association, are, first, to provide and operate a regular central office for the proper care of business; second, to take care of finances and funds; third, to keep in close personal touch with all members at meetings and by personal visits; fourth, to conduct necessary correspondence; fifth, to maintain and increase membership; sixth, to serve as a clearing house between the members for the exchange of credit information; seventh, to develop and distribute information and statistics of educational value relating to costs of production, selling markets, trade and labor conditions; eighth, to attend all meetings and keep accurate stenographic records thereof.⁴⁹ Other duties sometimes enumerated are, to send copies of minutes of meetings of the association and the executive committee to members;⁵⁰ to keep a list of members and the date of their election;⁵¹ to notify all members of assessments due; to notify all members of the times and places of meetings;⁵² to examine all bills and countersign all orders on the treasurer;⁵³ to prepare an annual and semi-annual report of all transactions and all conditions;⁵⁴ to preside at all meetings.⁵⁵

THE CENTRAL OFFICE

An essential part of the structure of an open price association is an office where the secretary may carry on the work of gathering and disseminating information. Some associations have their own central office in charge of a salaried secretary.⁵⁶ However, a very common practise is for several open price associations to have an office and secretary in common.⁵⁷ There is a tendency

⁴⁸*Constitution*, Art. 2.

⁴⁹Tap & Dye Institute, *By-Laws*, Sec. 2.

⁵⁰Leather Belting Exchange, *By-Laws*, Sec. 3.

⁵¹Steel Barrel Manufacturers' Assn., *Constitution*, Art. 4, Sec. 4.

⁵²Society of Manufacturing Confectioners, *By-Laws*, Sec. 3.

⁵³Society of Manufacturing Confectioners, *By-Laws*, Sec. 3.

⁵⁴American Hardwood Manufacturers' Assn., *Constitution*, Art. 9, Sec. 4.

⁵⁵Leather Belting Exchange, *By-Laws*, Sec. 3.

⁵⁶For instance, Bridge Builders' Society; National Association of Finishers of Cotton Fabrics; Leather Belting Exchange.

⁵⁷A. A. Ainsworth and A. A. Blake each serve about a dozen associations in New York City.

in the direction of centralization of this kind. Not only does it reduce expense, but it makes possible the employment of a secretary, highly trained in coöperative work, whose salary in the aggregate would be too large, perhaps, for any one association to undertake to pay. Secretaries find, that by a proper organization of their office force, they can readily handle several associations. In fact, the experience which a secretary derives from coming in contact with the problems of several different lines of business can be used to good account in coping with the problems that are encountered by any one of the associations. Where open price work is done as an adjunct to other trade association activities it is customary for the trade association secretary also to assume the duties connected therewith. A few instances may be found where an association does not run an office of its own nor employ a secretary, but simply arranges for an outside agency to manage the details of operation. The Pressed Metal Association, for example, has its open price work done by a Boston firm of certified public accountants.⁵⁸ The Associated Metal Lath Manufacturers and the Linseed Crushers' Council operate through the Armstrong Bureau of Related Industries, located in Chicago.⁵⁹

MEETINGS

Great stress is placed on the importance of bringing members frequently together in meetings. Most of the associations that are planned along the lines advocated by Mr. Eddy have monthly meetings.⁶⁰ A few have them two months apart.⁶¹ Those associations that are really trade associations engaged in open price work as a branch of their activity usually have meetings only once or twice a year.⁶² Besides the monthly meetings there are the annual and special meetings. The constitution nearly always provides a set date for regular and annual meetings. Special

⁵⁸Scovell-Wellington & Co.

⁵⁹For a description of the Armstrong Plan, see Montague Ferry's book, *Intelligent Selfishness*, Chicago, 1919.

⁶⁰For instance, Leather Belting Exchange; Cotton Finishers; Bridge Builders' Society, American Hardwood Manufacturers' Association.

⁶¹For instance, Steel Barrel Manufacturers' Assn.

⁶²Examples are Knit Goods Manufacturers of America; Ohio State Millers' Assn.

meetings may usually be called by the president, or on the written request of a certain number of members. The constitution of the Leather Belting Exchange, however, provides that special meetings may be called at any time or place by the executive committee, or upon the demand of six members. That of the Knit Goods Manufacturers of America provides that they may be called upon the request of the secretary, or by five members, or a majority of the executive committee, or "upon the sole authority of the President."⁶³ Sometimes the date for the monthly meeting of the executive committee is specified.⁶⁴ It is nearly always provided that members must be notified of meetings a certain number of days in advance. The usual quorum for the transaction of business is a majority of the membership. The Ohio Millers' State Association provides that fifteen members present at meetings shall constitute a quorum.⁶⁵

A few associations, judging from the clauses incorporated in their constitutions, encourage the attendance of buyers at meetings;⁶⁶ others prohibit it;⁶⁷ the majority, however, make no declaration on the matter.

Those who are uninitiated in the work of open price associations would naturally suppose that the chief topic of discussion in meetings is prices. The truth seems to be that prices, themselves, are not so much discussed as are, first, the circumstances attending the quotation of certain prices, second, the conditions of the market that make for lower or higher prices. The reason for the apparent anomaly, that prices themselves are not discussed to any extent in an open price meeting, is that this information is imparted to the membership through the reporting system. Members, therefore, already know what prices have been charged, and they come to the meetings to find out why prices are as they are, and to learn what the business outlook is in order that they may put themselves in a position to quote future prices intelli-

⁶³*Constitution*, Art. 8, Sec. 2.

⁶⁴See *Constitution*, Franklin County Coal Operators' Assn., Art. 1.

⁶⁵*Constitution*, Art. 7, Sec. 3.

⁶⁶Knit Goods Manufacturers of America, *Constitution*, Art. 8; American Hardwood Manufacturers' Assn., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1104; Society of Manufacturing Confectioners, *Constitution*, Art. 5.

⁶⁷Steel Barrel Manufacturers' Assn., *Letter*, Jan. 20, 1921.

gently. An examination of the minutes of all the group meetings of the American Hardwood Manufacturers' Association for the year 1919 discloses only three references to the prices of specific items of lumber, and two of these, by the way, were made by non-members of the plan.⁶⁸ Undoubtedly there is a temptation to discuss future prices; it is therefore generally provided that counsel be present at meetings to see that discussions are confined to strictly lawful subject matter.

The Eddy associations appear to be very scrupulous in avoiding discussion that might be construed to be in violation of the law. Among organizations that have not come under the influence of Mr. Eddy or his lieutenants less vigilance in this respect is not infrequently displayed. The following quotation illustrates the kind of discussion which is permitted by many so-called open price associations but which would not be tolerated by an Eddy association:

"As showing the utility of the Price Exchange Plan, a price was taken from the first report presented and was stated to the members present for their opinion. The merchandise concerned was a 176-needle half hose, 16 ounce, with looped toe, sold at \$1.15. It was the opinion of all, including several New York selling agents who were present as guests that the price was too low, and one selling agent stated that the price should be \$1.25."⁶⁹

Reference to the minutes of a typical Eddy Association shows that members are not even permitted to act as a body in standardizing terms of payment.⁷⁰ In as much as terms of payment are an integral part of price, a united effort to fix terms would be just as illegal as a united effort to fix the prices themselves. Apparently this fact is not recognized among many associations because the practise of standardizing terms is exceedingly prevalent.⁷¹

In general the chief features of an open price meeting program as conducted by the typical Eddy associations may be summa-

⁶⁸See *Record*, American Column & Lumber Co. vs. U. S., Vol. I, p. 100.

⁶⁹Account of a meeting of the Pennsylvania Division of the National Association of Hosiery & Underwear Manufacturers, *Textile World Journal*, Oct. 20, 1917, p. 73.

⁷⁰The Drill and Reamer Society, *Minutes of Meeting*, June 11, 1920.

⁷¹Particularly so in the lumber industry. See *American Lumberman*, Dec. 22, 1917; Nov. 3, 1917; Oct. 20, 1917.

rized as follows: first, a meeting of the executive committee, followed by a meeting of the association; second, the transaction of all routine business; third, discussion of questions touching on the details of past transactions such as reasons for quoting certain prices, methods of figuring costs, and the like;⁷² fourth, the hearing of reports from each member regarding general conditions in the industry.⁷³

The device adopted by the American Hardwood Manufacturers' Association for making the round robin discussion of market conditions most effective is worthy of special comment. Prior to the holding of the monthly meetings a questionnaire was sent to each member. The following questions were contained in the questionnaire:

1. "From what class of customers are your inquiries coming and what per cent of your total inquiries come from each class?

2. "From what class of customers are your orders coming and what per cent of your total orders come from this class?

3. "Check off from the following list how long it would take you to ship out the total orders on hand working under normal conditions, and assuming that all orders you have on your books are ready for shipment.

4. "What is your total production of hardwoods during the month of ? What do you estimate your production will probably be for months?

5. "What is your total present stock of hardwoods, sold and unsold? What part of your present stock of hardwood is unsold?

6. "Are your labor conditions any different from 30 days ago? Are they better or worse? What caused the change, if any?

7. "How is the car supply at the present time; better or worse, as compared with 30 days ago? What per cent of your requirements are you getting?

8. "How are your collections? Are they better or worse as compared with 30 days ago?

⁷²See *Textile World Journal*, Jan. 13, 1917, p. 109.

⁷³*Transcript of Minutes of Meeting of the American Hardwood Manufacturers' Assn.* may be found in the appendix. See Exh. No. 2.

9. "What per cent of normal for this time of the year is your present supply of logs banked ahead of the mill?

10. "Do you expect to be shut down within the next few months on account of the shortage of logs, or for any other reason? If so, please state how long mill will be idle.

11. "What is your view of market conditions for the next few months? What is the general outlook for business? State all reasons for your conclusions."⁷⁴

A summary of the replies received under each head was prepared by the manager of statistics and the results were made the basis of discussion at the next group meetings, each member present being called upon in turn to express his point of view with reference to each question as it came up for discussion. Gathered, as they were, from a substantial part of the whole industry, these data when properly summarized gave a bird's-eye view of the industry, which, when reënforced by an open and free discussion in meetings, proved a great aid to members in finding remedies for conditions that were unsatisfactory.

It is peculiarly characteristic of the open price meeting that discussions, instead of being of a rambling, disconnected nature and leading to no definite end, are calculated to give each member a perspective of the industry as a whole to the effect that he may direct his individual business efforts in consonance with those of all the others in such a way as to inure to the greatest profit of all.⁷⁵

⁷⁴Affidavit of F. R. Gadd, *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1101.

⁷⁵For a copy of a typical open price constitution, see appendix, Exh. 3.

CHAPTER V

THE REPORTING PLAN

Barring the work done at meetings, the reporting system covers most of the activities ordinarily engaged in by open price associations. Since no two industries use the same method in marketing their output there will be found points of difference in every reporting plan; however, these plans readily group themselves into two broad classes: one pertains to manufacturers who produce goods sold to jobbers and retailers primarily; the other to manufacturers who make goods only to specification, each contract differing more or less from all others and calling for special bids and prices.¹

REPORTING AMONG MANUFACTURERS WHO MAKE GOODS TO SPECIFICATION

Variations in plans among this group of manufacturers are less pronounced than they are among the other group. Mr. Eddy evidently had chiefly the class of contracting manufacturers in mind when he wrote his book, for only passing notice is given to the class of manufacturers that sells to jobbers and retailers.² Briefly outlined, Mr. Eddy's plan, as presented in his book, calls for the filing by members of all inquiries received, all bids made, and all contracts awarded. Under this plan the secretary does not permit the information contained in the reports of inquiries to be interchanged among members for the reason that there would be a strong temptation for members to resort to collusive bidding.³ The reports of inquiries are used to make up a weekly bulletin containing statistical information throwing light on the volume of work in prospect, as well as the general character of the work. The secretary interchanges all

¹Eddy, A. J., *New Competition*, p. 123.

²*Ibid.*, p. 123.

³*Ibid.*, p. 128.

bids as received among those who have bid on a given piece of work, provided that all have filed copies of their bids and have not marked them "sealed". Those who have not filed copies of their bids get no information concerning the bids of the others. If a member sends in a bid marked "sealed" the secretary will retain it, and no information regarding that bid will be sent to other members until after the contract is awarded, whereupon all bids are opened for discussion. The member who marks his bid "sealed" gets no information regarding other bids. Apparently the reason for a provision calling for "sealed bids" is to induce the skeptical to try out the open price plan by giving them the right to file bids sealed if they so desire; in time they drop the practise because it offers no advantages.⁴ No bidder is bound to adhere to the bid that he has filed. After ascertaining the bids of others he is free to lower his own bid to obtain the work, but he must immediately file all changes so as to give other bidders opportunity to revise their bids if they care to do so. The final report sent out to the bidders by the secretary is a copy of the contract as finally awarded. This, in brief, constitutes the reporting system as laid down by Mr. Eddy for this class of manufacturers.⁵

How closely have open price associations followed the plan laid down by Mr. Eddy? At any rate, among those associations for which Mr. Eddy's successor is counsel, there appears to be one pronounced deviation.⁶ This pertains to the matter of inquiries. In his testimony before the New York Joint Legislative Committee on Housing, Mr. Eddy's successor stated that none of the associations with which he was connected made reports of inquiries. He could not explain why this feature had not

⁴The Bridge Builders' Society started this plan, but soon dropped it. See testimony of J. S. Dean, *Record*, U. S. vs. United States Steel Corporation, Vol. 2, p. 797.

⁵Eddy, A. J., *New Competition*, ch. VI.

⁶Mr. Wm. J. Mathews, Mr. Eddy's successor, is counsel for the following associations organized by Mr. Eddy: Bridge Builders and Structural Society; Ring Travellers' Society; Hoop Band Strip Steel Institute; Institute of Makers of Explosives, Dynamite and Gun Powder; Bolt, Nut and Rivet Society; Cold Roll Strip Steel Institute; Wire Fence Manufacturers; National Association of Finishers of Cotton Fabrics. See *Hearings before Joint Legislative Committee on Housing*, New York City, N. Y., Dec. 29, 1920, *Record*, p. 4602.

been adopted by Mr. Eddy when he organized these associations.⁷ Perhaps he feared that outsiders might come to the conclusion that inquiries were being reported in order to accomplish collusive bidding. Undoubtedly members could improve their position with this information at hand without resorting to collusive bidding. Such reports would throw a light on the volume of work in prospect. If they showed, for example, that a large volume of work was pending, members would be careful not to contract to capacity for low priced work and a stiffening of prices would undoubtedly come about in shorter time than might otherwise have been the case.

The other features of the Eddy plan for this class of manufacturers have been adopted in their general outlines. Variations in the detailed workings of the plan are of course to be found. The procedure in vogue among the Pressed Metal Manufacturers may be regarded as typical. Copies of bids are mailed to the office of the commissioner where all bids are arranged in a file according to the names of the prospective customers. If within a period of two months no other bids are received on the same contract it is assumed that no competitive bids were made. As soon as the records show that two members have quoted on the same contract, a report is made out on a form provided for the purpose, showing the names of members quoting, the part number quoted on, rate per thousand for parts, and the charge for tools. A copy of this report is mailed to both members quoting, but not to the other members. If one of the members obtains the order he makes a report of it to the commissioner, who in turn relays the information to the unsuccessful bidders. At the regular monthly meeting a statistical report is read showing the number of bids which have been reported, the number which are competitive, and the number which are closed.⁸

In the case of the National Association of Finishers of Cotton Fabrics the members quote daily as soon as made every quotation, written or verbal, giving name of customer, description

⁷Testimony of Wm. J. Mathews before the New York Joint Legislative Committee on Housing, New York City, N. Y., Dec. 29, 1920, *Record*, p. 4633.

⁸Tosdal, H. R., "Open Price Associations," *American Economic Review*, Vol. VII, No. 2, June 17, 1917, p. 343.

of work, quantity, terms, discounts, "and all inducements, direct or indirect." Each week each member files with the secretary on a blank prepared for the purpose statistical information as to "quantity of orders in pounds or yards and the number of days' work ahead." The secretary classifies the information received and makes daily and weekly reports to members, sending the summarized reports to those, only, who have contributed information.⁹

The Eddy associations make an exception to the general procedure of reporting as illustrated by the cotton finishers and pressed metal manufacturers where bidding is done on contracts for governmental or other public bodies. Where work of this kind is involved, bids are not exchanged because these bodies will accept only one bid from each bidder and that bid must be delivered sealed and is to be opened only on a specified date and hour.¹⁰

An interesting deviation from the plans characteristic of the Eddy associations is in use by the National Bottle Manufacturers' Association. In this case an exchange of information is made only upon the request of some member. The member desiring the exchange of information fills out a specially prepared form. He wants to know two things: first, what prices and terms have been quoted on the contract in which he is interested; second, who the successful bidder is and what prices and terms he has made to obtain the contract. The customer's name and address are shown; a description of the contract is given; and the bid made by the inquiring member is fully described. Upon receipt of this inquiry, the secretary sends out on a prepared form a request to every member for information bearing on this contract. Members are asked to state, first, whether or not they have quoted on this contract, and if so, what terms were made; second, whether or not the order was received, and if so, on what terms. Members reply directly on the forms. The secretary

⁹*Ibid.*, p. 342. For an account of the reporting system of the Bridge Builders and Structural Society, see *Record*, U. S. vs. U. S. Steel Corporation, Vol. II, pp. 797-803. For a general description of the Eddy reporting system, see testimony of Wm. J. Mathews before the N. Y. Joint Legislative Committee on Housing, Dec. 29, 1920, pp. 4630-4636.

¹⁰*Ibid.*, p. 4634.

compiles on another prepared form the information received, and mails it to the members who have made reports in response to the inquiry. The result is that these members obtain the following information about the contract in question: first, a full description of the terms made by each bidder reporting; second, the name of the successful bidder and the terms that he made, including price, date of shipments, freight allowance, and any other inducements, direct or indirect. The only name disclosed by the secretary is that of the successful bidder. The names of the other bidders are designated by letter. Only the secretary has the key to the lettering system. This offers one illustration among many that might be given of the secretiveness that persists among members even after they have joined hands in an open price association. They are not willing to disclose their names for fear that a competitor might work them an injury.

REPORTING AMONG MANUFACTURERS WHO SELL TO JOBBERS AND RETAILERS

The business facts most commonly exchanged among this class of manufacturers are those relating to prices and terms of payment, production, orders, shipments, stocks, purchases, manufacturing and selling costs, returned goods, cancellations, advertising, and credits. Some of this information, particularly that relating to manufacturing costs, orders, purchases and credits, is also exchanged among manufacturers of the class just described but the practise is less common than it is among the class that sells to jobbers and retailers.

In order to make prices and trade and cost statistics comparable it is imperative that the goods be closely graded or standardized. It will accordingly be found that an amazing degree of standardization has taken place among manufacturers who are members of open price associations. Of course standardization in many instances was begun long before open price work was contemplated because of other numerous advantages of having standardized commodities, but certainly the open price movement has greatly accelerated progress in the direction of standardization.¹¹

¹¹For a good example of standardization see form for reporting prices in use by

A few cases are found where open price work is being done in a limited way even tho little standardization has been accomplished. Some industries do not lend themselves to standardization because individuality of style is sought after and is a strong factor in competition. One of these industries is the textile industry. Open price associations in this field, notably the Woolen Goods Exchange and the Knit Goods Manufacturers of America, have endeavored to overcome in some degree the difficulty involved in obtaining comparable information, by having members file with the secretary samples of the goods which each manufacturer is marketing, with a price tag attached to each sample. Members are then privileged to come to the office of the secretary to view these samples.¹²

A unique method that aims to accomplish the same purpose is in use among chair manufacturers. Each manufacturer mails the secretary a photographic reproduction of each style of chair that he has on the market and indicates on the face of the photograph the price that is being quoted. The secretary provides each reporting member with a copy of all photographs. Members thereafter inform him of all changes in quotations and he, in turn, instructs the membership to change the price indicated on the photographic plates accordingly. Of course this plan is not entirely satisfactory because the photographic plates give little inkling of what the quality and workmanship may be.

Many open price associations confine their reporting to a selected list of products. Newly organized associations find it most expedient to limit their price reporting to one or two products because of the difficulties that are always to be encountered in getting the work on a going basis. The products first chosen are those, usually, which are the easiest to standardize and the most competitive in character. After an organization for price reporting has been built up, it becomes relatively easy to add other products to the list. The members of the Woolen Exchange, for example, began reporting (July 1, 1916) only on staple men's wear and broadcloths; these goods were the most competitive and were sufficiently uniform in grade to enable

the Society of Manufacturing Confectioners, appendix, Exh. 4.

¹²*Textile World Journal*, Jan. 13, 1917, p. 60.

price comparisons to be made. Soon uniform cloths were added. These were followed by a considerable line of women's wear fabrics and toward the end of that year several lines of fancy goods were added.¹³ Members of the American Hardwood Manufacturers' Association began reporting one species of wood only, namely oak, which was most widely produced. This was in 1917. By 1919 practically all the southern hardwoods of any importance were being reported.¹⁴ Some industries probably never can be standardized sufficiently to permit all of their products to be reported. It would seem almost impossible, for example, to introduce price reporting in any comprehensive way in the dry goods trade, where styles are almost innumerable.

Among the class of manufacturers who cater to jobbers and retailers the greatest differences prevail as to the amount of information that is exchanged. A few are so open in their exchange that each member knows practically all about the business of every other member. (This, of course, could only be true of some of the smaller associations.) Others do little more than exchange price lists. The reporting system may be the simplest imaginable or it may be extremely elaborate. The Ohio State Millers' Association, for example, only requires its membership to fill out a card once a week, indicating the sales, output, and purchases for the week, and stock on hand at the time of reporting. All that a small group of lumbermen in Mississippi do is to mail to their statistical bureau in Hattiesburg a typewritten carbon copy of the orders received for the day. The secretary sends out at irregular intervals a mimeograph statement of the sales reported. No other information is exchanged. In contrast to this, the plan of the American Hardwood Manufacturers' Association called for, first, the filing of a price list at the beginning of each month; second, a daily report of sales, to be an exact copy of orders taken; third, a daily report of shipments, to be an exact copy of the invoice; fourth, a monthly report of stocks, classified by grade, kind, and thickness; fifth, a monthly production report classified by grades and thicknesses; and sixth,

¹³*Textile World Journal*, Apr. 8, 1916; Jan. 13, 1917.

¹⁴*Reporting Plan*, American Column & Lumber Co. vs. U. S., *Record*, Vol. I. p. 81.

inspection reports. The secretary, of course, compiled this information and mailed it to members either in the form of reports or incorporated as a part of a weekly bulletin.¹⁵ Enough has been said at this point by way of illustration to indicate the wide range of difference existing between associations as to the amount of detail that members report. Further illustrations will arise in connection with the succeeding discussion of reports in use among the various associations. First will be considered reports in use in the exchange of price information; second, those used in recording cost, trade and other statistics.

Open price associations do not all follow the same method of reporting prices. Each of them has sought to work out a method which would yield the maximum results with the least expenditure of energy. Most associations, however, can be placed in one of two great groups. In one the practise is to exchange price lists either between the members themselves,¹⁶ or through the medium of the secretary. This procedure is supplemented by the reporting of such transactions as involve prices made at variance with these price lists. In the other group the practise is to exchange price information based only upon actual transactions.

The associations which have chosen the method of filing a price list and reporting only variations therefrom have usually been those whose products command a price which is stable for a comparatively long period of time, as is the case, for example, in the woolen and knit goods lines, or the furniture line, where certain prices are announced at the beginning of the season and remain approximately at those figures during the remainder of the season. Obviously time and energy are saved in avoiding the reporting of numerous transactions where prices charged are identical with those shown on the price list. On the other hand, not being accustomed to report all sales, members are likely to neglect to report such prices as are made at variance with those

¹⁵*Reporting Plan*, American Column & Lumber Co. vs. U. S., *Record*, Vol. I, pp. 82-86.

¹⁶Little information is available as to the prevalence of this practise. Members of the National Photo-Engravers exchange price lists among themselves in small groups in certain localities.

on their list. In order to avoid this contingency to some extent, as well as to prevent misunderstandings as to what may be the active prices, some associations provide that each member must file a new price list at regularly recurring intervals;¹⁷ others provide that a new price list must be filed every time a member issues one to the trade.¹⁸

Associations that are interested in products for which the market is a fluctuating one are likely to line up with the group that requires its members to report actual transactions. The other scheme would not work well where the market is a fluctuating one because a price list issued one day might be obsolete the next. But also in this group there are associations that attempt to obtain maximum results for effort expended by eliminating certain transactions from their reporting system. The Linseed Crushers' Council, an open price association operating under the direction of the Armstrong Bureau of Related Industries, requires that members report only carload sales. It is not felt that sales of less amount have any material effect on the market.¹⁹ The Leather Belting Exchange requires its members to mail to the secretary copies of all invoices, but only those above \$60.00 are listed in the secretary's report to members.²⁰

There seems to be very little variation in the plans of such associations as provide for the filing of price lists. As previously intimated they are filed either at regular or irregular intervals. The Knit Goods Manufacturers of America require that price lists be filed at least once every three months, and if price changes become very active members are urged to file price lists more frequently.²¹ Usually price lists are reported on specially prepared forms. Price variations are to be reported as soon as made. Prepared forms are not so frequently provided for this purpose; quite commonly this information is simply conveyed

¹⁷*Reporting Plan*, Knit Goods Manufacturers of America, *Textile World Journal*, May 19, 1917.

¹⁸*Reporting Plan, Constitution*, Society of Manufacturing Confectioners.

¹⁹*Bill of Complaint*, U. S. vs. American Linseed Oil Co., et al.

²⁰Spaulding, W. V., *Experiences in Coöperative Competition*, p. 6; also Tisdal, H. R., "Open Price Associations" *American Economic Review*, Vol. VII, No. 2, June 17, 1917.

²¹*Constitution*, Art. 10, Sec. 7.

by letter. The secretary immediately relays the information to the other members.

Variation in practise is greater among the associations which require reports covering nothing but actual transactions. Practically all of the lumber manufacturers' associations require a daily report of sales. In the case of the American Hardwood Manufacturers' Association the members' daily report showed all sales and cancellations made that day, and these reports were to be exact copies of orders taken, and to include all sales, large or small, as well as all special agreements of every kind in reference to price, grade, or terms.²² The West Coast Lumbermen's Association requires that all sales be reported daily and they must be consecutively numbered and be submitted in affidavit form. Members of the Northern Hemlock and Hardwood Manufacturers' Association sign a weekly statement to the effect that they are reporting all sales that have been made during the week. Members of the North Carolina Pine Association are not required to sign an affidavit in connection with their submittal of daily sales reports; they do not even sign their names, but fill in the number by which they are identified in the secretary's office. In contrast to this, members of the Steel Barrel Manufacturers' Association sign a statement printed on the daily sales report that reads as follows: "The report above is a true and complete report of all sales made this day, * * * which we pledged to report and develops every feature of such sale without any omissions as to concessions, rebates, or allowances that have been made either directly or indirectly." The Armstrong Bureau has developed an unusual arrangement for quickly communicating market information to the linseed oil manufacturers. The latter are instructed to send telegraphic reports of price changes to the bureau. They are sent in code in order to save expense and are immediately relayed to all members in coded form. The price of linseed oil moves in harmony with the price of linseed. The price of linseed fluctuates almost daily. In order to keep properly informed of the trend of the market it is found necessary to report by telegram. In contrast to this, members of

²²*Reporting Plan, Record, American Column & Lumber Co. vs. U. S.*, Vol. I p. 82.

some associations aim to keep only roughly informed of the trend of the market. Members of the United States Potash Producers' Association, for example, turn in a combined production and sales report only once a month. Other associations are either content to learn only the approximate trend of the market or sales are so few and fluctuations so insignificant that it is not deemed necessary to require members to report sales oftener than once a week. Members of the News Print Service Bureau report weekly sales on a card about the size of a blotter. Export and domestic sales are shown separately, as are carload and less than carload sales.

Respecting the exchange of price information, there remains to be discussed what kinds of reports are submitted by secretaries to the membership. Here, too, variations are very pronounced. They may be made by telegraph,²³ as previously stated, or they may be mailed daily,²⁴ weekly,²⁵ or monthly,²⁶ in typewritten,²⁷ mimeographed,²⁸ or printed form.²⁹ Not a single case has been found where the secretary is permitted to report the names of customers. The American Hardwood Manufacturers' Association planned to have this feature, but it was not adopted because members objected to divulging the names of their customers.³⁰ Some reports show the approximate destination of shipments. The daily sales report issued by the secretary of the Steel Barrel Manufacturers' Association shows the State wherein the sales are made. The weekly report of the Ohio Millers' Association shows the town or city. The American Hardwood Manufacturers' Association reports designate the territory in which sales are made

²³The Linseed Crushers' Council.

²⁴For instance, Steel Barrel Manufacturers' Assn.; North Carolina Pine Assn.; West Coast Lumbermen's Assn.

²⁵For instance, Ohio State Millers' Assn.; National Box and Shook Manufacturers' Assn.; Newsprint Service Bureau; American Hardwood Manufacturers' Assn.

²⁶For instance, Tool Steel Society.

²⁷For instance, Lumbermen's Statistical Bureau.

²⁸For instance, West Coast Lumbermen's Assn.; Ohio State Millers' Assn.

²⁹For instance, American Hardwood Manufacturers' Assn.; North Carolina Pine Assn.

³⁰*Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1107.

by the nearest city.³¹ The West Coast Lumbermen's Association and the National Box and Shook Manufacturers' Association reports give no clue whatever regarding the destination of shipments. Some reports do divulge the names of sellers,³² others indicate the identity of the seller by code number or letter only,³³ and still others give no clue whatever to the identity of the seller.³⁴ The secretary alone knows the identity of each seller represented by a code number. The use of the code number does serve a purpose to the other members, however. In case conditions surrounding some particular sale seem to any member to be unreasonable, he is given the privilege, in some associations at least, of taking the matter up with the secretary. The member communicates the code number to the secretary, who in turn will communicate with the manufacturer bearing this code number, and without divulging the identity of either the seller or the inquirer, report to the inquirer any special circumstances which may have surrounded the sale tending to explain any unusual conditions.³⁵

Secretaries do not always report each individual sale even tho members may have done so. The secretary of the West Coast Lumbermen's Association is furnished with a daily report of sales, but the report that he issues shows the total volume of sales, the low, high, and the "prevailing" price, covering a period of three or four days at a time.³⁶ One secretary reports, monthly, a list of "ruling prices that have been quoted in the market." The secretary of a society handling steel products reports only the total number of pounds of each kind of steel sold at each price. A similar scheme is in use in an association of dyers. Finally certain associations provide for the contingency where manufacturers sell both to jobbers and retailers by getting

³¹See copy of sales report, appendix, Exh. 6.

³²For instance, American Hardwood Manufacturers' Assn.; National Chair Manufacturers' Assn.

³³Steel Barrel Manufacturers' Assn.; North Carolina Pine Assn.

³⁴For instance, West Coast Lumbermen's Assn. The National Box and Shook Manufacturers' Assn. report shows no names of sellers, but indicates the number of sellers who have reported.

³⁵Spaulding, W. V., *Experiences in Coöperative Competition*, p. 6.

³⁶See copy of report in appendix, Exh. 7.

out sales reports with two sections to them, one devoted to retail prices, the other to wholesale prices.³⁷

From the foregoing it will be seen that the exchange of price information is a most important function of open price associations. However, there are those who contend that if cost systems could be standardized so that each member might know his costs accurately, there would be no need of exchanging price information. Those who make this assertion apparently are actuated by the theory that the proper price is that based on cost plus a reasonable profit. Many manufacturers feel, however, that because of the recurring waves of prosperity and depression to which the industrial world is subject, they must in times of prosperity create a cushion of profits with which to absorb the losses that come in times of depression. In other words they must at all times seek to get the price that market conditions will permit them to obtain. Open price associations are therefore not content to limit their activities to the exchange of cost information.

It is conceivable that members might be able to obtain the maximum price consistent with market conditions without exchanging information about prices, if statistics of production, orders, shipments and stocks could be assembled, compiled, and disseminated in such a way as to be representative of the whole industry, and at the same time be intelligently acted upon by each manufacturer in the industry. But because of the many difficulties that stand in the way of achieving such a goal, associations have been content to arrive at an approximate estimate of the trend of the market by taking the easier course of simply exchanging information about prices. Many associations have as yet attempted nothing more. Associations that represent industries in which the number of competitors is comparatively small succeed best in gathering trade statistics, because there are a smaller number to be educated to an understanding of the value of taking the time and trouble to furnish these statistics for compilation and dissemination. The plan of the American Hardwood Manufacturers' Association called for a monthly production report, but this feature of the plan had to be abandoned

³⁷This is done by the Knit Goods Manufacturers of America, for instance.

because members either did not have their bookkeeping so ordered that they could furnish this information, or they were unwilling to take the time and trouble to do so.³⁸

In discussing reports of trade statistics, costs, et cetera, consideration will be given, first, to those which, when considered in relation to each other, throw a light on present and future market conditions, these being reports of orders, production, shipments, and stocks; second, to reports of costs, and to reports of items which are elements of costs, namely reports of credit information, purchases, advertising, and wages. This will complete our review of the main features of the reporting plan.

As often as not, associations require members to submit their reports of orders, shipments, production, and stocks in combined form, and these are then summarized by the secretary and issued to the membership in combined form. By bringing figures of orders, production, shipments, and stocks into juxtaposition on one form, a bird's-eye view of the general trend of the market is obtained. Of necessity a report of this kind is very general in its purview. If a product is divisible into many species or grades some or all of which have a competitive market all their own, it is probable that a combined report would not be satisfactory unless it could be issued for each species or grade, for a combined report could of necessity not show, for example, the orders received for each grade, or the production, shipments and stocks of each grade. In as much as the competitive situation for one grade might be entirely different from that of another, it follows that a combined report in which grades or species have no place might not be the most acceptable. On the other hand, the work entailed in getting out separate reports, one of which, for example, might show the volume of orders for each grade or species, another the production of each grade or species, another the stocks of each grade or species, et cetera, might be so great as to make it impracticable to adopt the system of individual reports in its entirety.

The North Carolina Pine Association has found the use of a combined form to be fairly satisfactory because its members are interested principally in one kind of lumber, namely the pine

³⁸Gadd, F. R., *Record*, American Column & Lumber Co. et al., Vol. II, p. 1107.

grown in the Carolinas. But even in this case the report is deficient because it does not concern itself with the various grades of pine, nor with the various thicknesses in each grade. In an association such as the Hardwood Manufacturers' Association, representing a membership that produces and markets more than a dozen different species of hardwood lumber, each one of which has several grades, all of which have several different thicknesses, it is manifest that a combined report could not be used with success. Members of the North Carolina Pine Association report each Monday on a specially prepared form the total volume of orders for pine that have been accepted, the total shipped and the total produced during the preceding week, all measured in feet of lumber. Space is also provided for recording the normal output per day. It is specifically stated that the figures submitted will be held strictly confidential. No signature is required, each reporting member merely inserting the number by which he is identified in the secretary's office. On the following Thursday each member reporting is mailed a printed summary of the figures that have been reported. This shows the number of mills reporting, the totals and averages per mill of orders, shipments, production and normal production, the percentage relationship between, first, orders and shipments; second, orders and actual production; third, shipments and actual production; fourth, orders and normal production; fifth, shipments and normal production; sixth, actual production and normal production. Furthermore the percentage to normal of orders, production, and shipments is shown graphically by the use of a form of barometer originally used by the Brookmire Economic Service to picture fundamental business and financial conditions.³⁹ Finally the orders, shipments, production and normal production as given by previous reports running back over a period of three months is shown in columnar form, thus enabling a comparison to be made from month to month. Statistics of stocks have no place in this report. They are collected and disseminated only about once a year.

Some associations apparently prefer to substitute in their combined reports statistics of stocks for statistics of orders. One association issues a monthly statement of production, shipments,

³⁹See copy of report, appendix, Exh. 8.

and stock, in which the statistics for each are shown for every month covering a period of four years. In addition, each member receiving this report is given his percentage of production, shipments, and stock to the totals for the association. Since figures are lumped, those of any single concern are not known to any other single concern, but, as just indicated, each member is given his proportion to the whole. By comparing this proportion month by month and year by year, every member can determine whether he is getting the share of work that he is accustomed to get, or more or less, and he can determine whether he is carrying too heavy or too light a stock.⁴⁰

A certain association of chair manufacturers does not find it feasible to gather and disseminate statistics of production and stocks. Members are asked to submit a monthly report on a specially prepared form showing in dollars the total shipments, total orders received, total cancellations, and total unfilled orders for each of five different chair groups composed of dining room, bedroom, and office chairs, rockers, and "miscellaneous." With the report members are requested to transmit a check to cover monthly dues, based on a percentage of the total shipments reported. With these data as a basis, the secretary issues each month a graphic chart called a "Monthly Experience Chart." By means of graphs the trend of orders received is indicated not only for the whole of the present year, month by month, but for the corresponding months of the year preceding; in the same manner graphs are drawn to show shipments made this year, shipments made last year, unfilled orders this year and unfilled orders last year, all by months, and in terms of dollars.

In an association of sales book manufacturers the secretary issues a monthly report showing, not only production and order statistics, but the number of quotations that have been filed at variance with price lists and the number who have sold below their price lists. Aside from the notation of the special quotations filed, and the sales below list, the following information is given in columnar form: first, percent actual quantity production to normal; second, percent actual value production to normal; third, percent actual quantity sales to normal; fourth, percent actual

⁴⁰Babson, R. W., *Reports on Coöperation*, No. C. C-7.

quantity books sold new users to total sold; fifth, time required to complete unfilled orders and contracts. The arrangement is such that these data appear for each member, but members are designated by number only. Below these data is a comparative table showing this information by averages for the past year according to months.⁴¹

Production and shipment statistics are frequently combined in one report. In the lumber industry it is customary to issue a monthly report of cut and shipments.⁴² One association makes a graphic record of orders received, production and shipments, showing by means of lines the comparative trend in percentages by months.⁴³

A sufficient number of illustrations have been given to show that there is little uniformity in the arrangement of the contents of these combined reports. Each industry has apparently sought to develop a form that would best meet its peculiar requirements.

Individual reports of orders, production, shipments and stocks appear to be less frequently used than the combined form of report. Undoubtedly the combined form of report makes the strongest appeal to the average business man because it gives him at a glance a perspective of the whole industry that he cannot obtain from a perusal of individual reports except by correlating them in his own mind, a task that is often regarded as being too irksome to undertake.

A common form of individual report submitted by secretaries to show the periodic relationship between volume of sales is described in one of the bulletins on coöperation published by Babson's Statistical organization.⁴⁴ Two columns of percentages are given. One column shows the percentage of sales made by all members for the month reported, of sales made by all members for the same month of the preceding year; the other column shows the percentage of sales made by all members from the beginning of the year to and including the month of the report, and of sales

⁴¹See copy of report, appendix, Exh. 9.

⁴²See an illustration, *American Lumberman*, Feb. 10, 1912.

⁴³For copy of report see Naylor, E. H., *Trade Associations*, New York, 1921, p. 260.

⁴⁴Babson, R. W., *Bulletins on Coöperation*, C.-C. 11.

made by all members for the same period of the preceding year. The Optical Manufacturers' Association compiles a weekly report of orders.⁴⁵ Once every three months a tool steel society issues a blueprint which shows diagrammatically for each kind of steel the total volume of orders received in pounds for each month of the preceding three months. The diagrams show at a glance whether orders have been increasing or diminishing.

Statistics of production are usually assembled with other statistics in a combined form. However, a society handling drill and reamer products does issue a form based on the percentages of operation as reported by the membership, showing the average percentage of operation for the month as compared to normal as well as that for the month preceding, together with the increase or decrease in percentage.

Stock reports may be very simple, as in the case of the Salt Producers' Association, which divides salt into but four grades, or they may be very complex, as in the case of the American Hardwood Manufacturers' Association, whose membership produces from fifteen to twenty different species of lumber each one of which is divided into several grades, and each of the grades being divisible into several thicknesses. Members of the American Hardwood Manufacturers' Association were required to submit a monthly report showing the totals of all grades, thicknesses and kinds, and this information was redistributed monthly by the secretary. The secretary's report showed only totals, the quantities in the hands of individual manufacturers not being indicated.⁴⁶ Several of the other lumber manufacturers' associations distribute monthly stock reports.⁴⁷ As early as 1913 the North Carolina Pine Association inaugurated a scheme calculated to prevent the market from being unduly depressed by the presence of surplus stocks. Members report their list of surplus stocks to the secretary, who in turn circulates the list among the membership for the purpose of enabling members to buy up surpluses

⁴⁵Gaunt, E. H., *Coöperative Competition*, p. 20.

⁴⁶See copy of stock report, appendix, Exh. 10.

⁴⁷The Northern Hemlock and Hardwood Manufacturers' Assn. began reporting stocks in 1914, and the Yellow Pine Assn. (now Southern Pine Assn.) in 1913.

before having them thrown on the market to depress it.⁴⁸

If the limited information available may be taken as an index, exchange of data dealing with purchases is not very prevalent. Probably it is as much to the advantage of members to have reports of purchases as it is to have reports of sales. They can lose as much money through ignorance of conditions surrounding the purchase of raw materials as they can through ignorance of the market conditions surrounding the sale of their finished goods. The Salt Producers' Association exchanges information every month as to the number of tons of salt purchased by members. Members of the National Association of Box Manufacturers exchange information monthly relative to purchases of box lumber. The quantity, description, price, f. o. b. point, and the concerns from whom purchased are given.⁴⁹ Usually the compiled reports of purchases submitted by the secretary to the members do not give the member's or seller's names, or any details of the purchase, but merely state what the articles are, the quantities purchased, and the prices paid.⁵⁰

There appears to be little interchange of information bearing on the cost of labor. The workers themselves have, in many quarters, through their labor organizations obtained more exact information as to wages and working conditions than have their employers.⁵¹ The National Association of Box Manufacturers exchanges information once a month as to the hourly rate of wages paid for the various classes of labor in use. The rate paid for overtime and the number of hours per day that factories are running are also given.⁵²

The work done, not only by open price associations, but by the ordinary trade associations, in coöperative advertising is so well known that it scarcely needs to be mentioned here. Suffice it to say that associations are doing a great deal, not only in the way of popularizing the products which they sponsor, but also by de-

⁴⁸*The American Lumberman*, Oct. 24, 1913, p. 46.

⁴⁹See copy of report, appendix, Exh. 11.

⁵⁰Naylor, E. H., *Trade Associations*, p. 266.

⁵¹Garside, A. H., *The Value of Statistical Reports in Business*. Address before the annual convention of the Knit Goods Manufacturers of America, May 20, 1920, p. 4.

⁵²See copy of wage report submitted by members, appendix, Exh. 12.

termining the relative merits of the various advertising media and effectively removing such abuses, for example, as "padded" subscription lists.⁵³

The interchange of cost information is a very vital part of open price work. It is done on the theory that ignorance of costs is greatly responsible for the ruinous cutting of prices; that when members know their costs they will quote prices intelligently.⁵⁴ Mr. Belt, at one time Chief Accountant for the Federal Trade Commission, in an address before a group of hardwood lumber manufacturers, stated, "It is generally admitted that ruinous prices are due more to the fact that manufacturers do not know what their actual costs are than to their desire to sell at prices which do not yield fair returns on the money invested." He further stated that the Federal Trade Commission in its work had found that a majority of the business failures were attributable to poor accounting and inadequate business information.⁵⁵

In order to compare costs, it is necessary that all members have a uniform method of figuring costs. This does not mean that certain cost figures are to be imposed upon members; it means that they are to use their own figures, but in arriving at those figures the same method is to be used. In order to get uniformity of method, it is, of course, necessary that the association take the initiative in working out a system of uniform accounts suitable for the industry. Usually a committee taken from the membership is put in charge of developing a system. The committee generally hires a cost accountant to study the industry and to do all the detailed work. He sometimes visits the plant of every member of the association in order to learn wherein methods of operation vary and wherein they are alike, so that a system may be installed which will be sufficiently flexible to be adaptable to all plants. It is generally found advisable to make the system as simple as possible, for members will not be prevailed upon to install one that is so intricate in its operation that they cannot understand it. Once having established costs

⁵³Babson, R. W., *Reports on Coöperation*, C. C-11.

⁵⁴Gaunt, E. H., *Coöperative Competition*, p. 28.

⁵⁵Address before the Hardwood Manufacturers' Association of the United States, Jan. 30, 1917, *American Lumberman*, Feb. 3, 1917.

on a comparable basis, members are in a position to discuss them intelligently in meetings and through the medium of the secretary. For several years the exchange of costings has been going on among lumber manufacturers' associations.⁵⁶ A common method of exchanging costings has been for members to submit cost sheets showing costs for the leading items of production whereupon the secretary has averaged these costs, mailing to each member reporting a statement of average costs.⁵⁷

A form of activity in which all of the associations organized by Mr. Eddy are engaged is the interchange of credit information. Other associations have made little progress along this line. No doubt so little headway has been made, first, because of the existence of credit men's associations, to which most members probably belong; second, because of the fear of the average business man that competitors will discover the identity of his customers through the instrumentality of such an exchange. Credit men's associations are made up of non-competitors. Of necessity such an association can not furnish each member with as intimate a knowledge of a customer's credit standing as can an organization made up of members in the same line of trade. Such a vital matter as learning how much credit has already been granted to a customer can not very easily be ascertained by a credit association made up of non-competitors; but the secretary of an open price association can give this information because he has probably requested each member to advise him how much credit he has already extended to each of his customers and what the credit limit is of each customer.

One open price association asks its members to check such of the following as are applicable to each of their customers and mail the form to the secretary, whereupon he bulletins it to the other members or refrains from doing so if the reporting members so request:

1. Accounts overdue.
2. Refused statement.

⁵⁶For copies of cost reports submitted by members of the North Carolina Pine Association and cost statements submitted by the secretary to the membership, see appendix, Exhs. 13 and 14.

⁵⁷*American Lumberman*, May 1, 1915.

3. Refused to accept delivery.
4. Took excessive discount.
5. Slow pay.
6. Draft not honored.
7. Note or check protested.
8. Transferred real estate.
9. Closed by sheriff.
10. Has sold out.
11. Has requested extension.
12. Judgment entered against.
13. Has had fire.
14. Has made assignment.
15. Is in bankruptcy.
16. Condition improved.
17. Account satisfactory.
18. Cancelled order without authority.
19. Returned merchandise without permission.
20. Made unjust claim of shortage, of condition, of quality, etc.
21. Deducted discount to which not entitled.
22. Account collected by attorney or agency.
23. Account paid by installments.
24. Has given chattel or real estate mortgage.
25. Has given bill of sale or trust deed.

In addition members are requested to give the name, address, and business of the customer, the period of time that the customer's account has been on the books, the maximum credit extended, and the present condition of the account.

CHAPTER VI

THE ADVANTAGES AND DISADVANTAGES CONNECTED WITH OPEN PRICE WORK

The plan of this chapter will be to consider in the first part the advantages attending the operation of the open price system, and in the second part, the disadvantages involved, first, in the attempt to install an open price system; second, in the operation of such a system. In both parts, the aim will be not only to discuss the general advantages and disadvantages that inure from the operation of the open price association as a whole, but to pay some attention to the particular difficulties or benefits flowing from each phase of its work. Because of the newness of the open price movement very little data have as yet been accumulated which might throw any light on the attitude of buyers, whether they be engaged in buying for resale or in buying for purposes of consumption.¹ Probably insufficient time has passed for sentiment to be crystallized, one way or the other. The writer is therefore constrained to write this chapter principally from the point of view of the member of the open price association, altho not entirely so. Some discussion will be devoted to an elucidation of the point of view of purchasers.

ADVANTAGES

From the point of view of the member, all benefits of open price work may be said to be derived from the operation of two factors, namely, first, the building up of the spirit of coöperation; second, the interchange of information. Some secretaries have expressed to the writer their opinion that the development of the former element is the more important. Probably neither one is more important than the other. About all that can be truthfully

¹The benefit to the consumer from the conservation of timber due to the operation of the open price system is discussed in ch. 7, pp. 148-156.

said is that there must be a certain degree of the coöperative spirit developed before members are willing to interchange information fully and freely. A concrete illustration of the attitude that is developed between competitors by the preaching of coöperation, by frequent contact in meetings and the like is afforded by the testimony of Mr. Smith, President of the Union Steel Casting Company, in the Steel Case:²

Q. "Now what is the difference, if any, in the attitude of competitors in your line toward one another from the condition that prevailed fifteen years ago?" A. "We are honestly friends now. Then we pretended to be friends, but were the bitterest enemies."

Q. "Can you give any illustration of that?" A. "Yes, sir. Perhaps a year and a half ago or two years ago we were in difficulty in making driving wheel centers for the American Locomotive Company people. They complained about it, and I personally went there. I knew what caused them. We had to use anchors to carry the core. I found out what their complaint was; asked them if anybody was furnishing driving wheel centers without that difficulty. They said the Pratt & Letchworth Company of Buffalo furnished them without the hard spots. I went to Buffalo and told Pratt & Letchworth Company of our difficulty and asked them how they avoided it. They showed me a new kind of anchor they had, which did not make hard spots, gave me samples of them, and I got the same kind and had no further trouble. While I was there they told me that they had some difficulty with the sand, that their castings did not clean as well as ours, and wanted to know the trouble. I, of course, gave them all the help I could and told them that they were not grinding it enough, and stayed with them for about half a day, and they got better results from their sand, and we had no more hard spots in our wheel centers. We visited each others' plants for the purpose of improving our condition, and have no hesitancy in helping each other when we can."

Obviously where coöperative efforts are directed toward mutual helpfulness in improving industrial processes the benefit re-

²*Record*, U. S. vs. United States Steel Corporation, Vol. XX, pp.8068-8069.

dounds not only to the competitors involved but to the consumer.³

A good illustration of the coöperative spirit developed in meetings is afforded by the following extract taken from the affidavit of a hardwood Manufacturer belonging to the American Hardwood Manufacturers' Association:

"The fall and winter of 1918 found us with a large accumulation of stocks on hand in thoroly dry condition, and we found that it was difficult to move them at the prices we were asking. This condition continued through the earlier part of 1919, and in spite of our repeated sales effort, we did not secure any business for Red Gum as well as some other items. Therefore at a group meeting at Memphis, when market conditions were being discussed, I found that my competitors had been selling their Red Gum freely. I advised the group that I had been unable to move our Red Gum and that we had an accumulation of the stock above normal. It developed that my competitors had been able to move their stocks because their prices were considerably lower than ours. Shortly following this meeting, owing to our insistent efforts to place before the consuming trade of the country our Red Gum stock, we commenced to receive a good many inquiries and this, in part, as a result of the fact that our competitors who were at the group meeting where I stated we had this stock, informed their customers that we could supply their needs. * * * * * The fact that these group meetings develop a spirit of good fellowship, whereby my competitors are willing to advise a buyer that a common competitor can furnish stock that they do not happen to have, is of great value to me."⁴

Members interchange information in order to learn as closely as possible all the factors that have a bearing on the market for their product. If they lack knowledge of the market they are prevented, first, from properly regulating their business in conformity with business conditions; second, from securing the highest price for their product that market conditions warrant.

³For an account of the growth of the cooperative spirit in the New Bedford Open Price Association, see *New York Journal of Commerce*, May 1, 1916.

⁴Weiss, H. B., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1667-8.

In one sense the small producer may be said to receive the greater benefit from the interchange of information, because of the fact that the large producer with his large organization is in a better position to gather information for himself through his salesmen and by other means than is the smaller producer, who in many instances does not even have a traveling salesman in his employ. This is strikingly brought out in the case of the small mill owners who belonged to the American Hardwood Manufacturers' Association. Mr. Boyle, attorney for the association, in his argument before the Supreme Court stated that of the forty-eight letters which the Manager of Statistics of the association received, commending open price work that was being done, all of those that indicated that a better price had been received in one instance or another as a result of the operation of the open price system, were from small mills without a sales organization.⁵ Numerous affidavits from small mill owners, taken in the case, point to the same conclusion. The following is typical:

"As an operator of a comparatively small mill which maintains no sales force, he found these reports and letters of great value to him. Previous to belonging to the association he was largely at the mercy of the wholesaler, to whom he has always sold the bulk of his production. Before joining this association and receiving these reports, in June 1919, he sold first and second quartered white oak to wholesalers for \$88.00 per thousand at the mill, or \$105.00 per thousand in Boston, for which these wholesalers obtained from the consumers the prevailing price of \$250.00 per thousand. This condition of ignorance of conditions worked a hardship on him and was of no benefit whatever to the consuming public, the wholesaler reaping all the profit on the transaction.

"That a small producing mill without a sales organization cannot, under present conditions, intelligently do business unless through some association or other means that keeps him in touch with market conditions. In his opinion, the Open Competition Plan has been of great benefit to the small producing

⁵Argument of L. C. Boyle in the Supreme Court of the United States, *American Column & Lumber Company vs. U. S.*, Oct. 21, 1920, p. 68.

mills and has worked no hardship whatever on the consuming public.”⁶

Mr. F. B. Dabolt, a small mill owner, gave the following sworn statement:

“He received the sales report of the Open Competition Plan and found these reports of great use in keeping him informed as to the trend of the market. This information was of value to him in enabling him to gauge the worth of his lumber, * * * * *. The information contained in these sales reports was of special value, for the reason that his firm travels no men and has no sales organization, and unless he had access to these sales reports he would have been obliged to have obtained this information at considerable trouble and expense, or else have depended entirely on the statements of buyers as to the market value of his product. In that way these sales reports were of practical and financial value to him.”⁷

In another sense the large producer profits perhaps just as much as the small producer through the operation of a system that makes his small rival a more intelligent competitor, for the latter is then not so likely to “spoil” the market—at least so runs the argument—and in so far as price cutting is due to ignorance of the market and not to financial instability or other causes, it is probably valid. A small producer can do more damage to the market than the volume of his production would seem to give him the power to do because he can make quotations equivalent to many times the value of his production. Furthermore large producers are learning that little consolation is to be sought in the fact that competitors who quote inordinately low prices simply because they are not posted on market conditions, usually go bankrupt, for in nearly every case they are replaced by another crop of small, weak competitors, who will also “muddy the water.”

The large producer feels, then, that the only remedy for a situation of this kind, short of combination or consolidation, is to educate the small competitor.⁸

⁶*Brief for the Appellants, American Column & Lumber Company vs. U. S., Part 2, p. 68.*

⁷*Ibid., Part 2, p. 93.*

⁸*New York Journal of Commerce, Jan. 3, 1916.* Mr. Belt, at one time Chief

It might be inferred from the foregoing that because of his facilities for gathering information the large producer derives little direct benefit from the operation of the open price association. It is true that he may feel no need for price information because of reports received from salesmen,⁹ but he can learn little about the status of production, stocks, costs, et cetera, in the industry unless he exchanges information with his competitors. One consequence will be the lack of vital business statistics on which to base his production policy. But even sales reports might be of value, if for nothing else, as least as a check on the statements of salesmen. Salesmen, who in their eagerness to make a sale have quoted a particularly low price, contrary to the instructions that may have been given them, are wont to excuse their action on the ground that they were forced to make this price in order to meet that made by another competitor. Reference to sales reports will often show whether or not the excuse has any foundation in fact. If it has not, as is often the case, a repetition of needless price cutting on the part of salesmen seeking to make easy sales can be prevented, with a consequent saving of money.¹⁰ Furthermore, in cases where salesmen have been spending considerable time in ascertaining market conditions, the use of sales reports would make this activity less necessary, thus permitting salesmen to devote more attention to selling.¹¹

There is scarcely anything written or said about the open price plan that does not stress the value of open price work in preventing purchasers from perpetrating frauds upon the producer or otherwise overreaching him. This may be considered one of the leading arguments for the plan and is, perhaps, the strongest

Accountant for the Federal Trade Commission, once said: "The best price tonic I know of is an educated competitor." Address before the American Hardwood Manufacturers' Association of the United States. Jan. 30, 1917. *American Lumberman*, Feb. 3, 1917.

⁹Many manufacturers of hardwood lumber stated that they felt no need for sales reports because they employed salesmen who kept them in touch with the market. See *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1508.

¹⁰For illustration of the use of sales reports as a check on information received from the sales force see *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1921.

¹¹*Textile World Journal*, April 8, 1916.

one offered in justification of its existence. The practise among buyers of misrepresenting the prices quoted to them, playing one competitor off against the other, in order to "beat down prices" or obtain secret rebates or discounts or other favors has become so common that it is scarcely looked upon as an illegitimate trade practise any longer.¹²

In the contracting world owners misrepresent the nature of the bids received, leaving the impression among those who have submitted bids that theirs is not the lowest, the intent being to induce them to submit lower bids, which they usually do, unless they are informed by means of the exchange of bids as to the true circumstances. That this malpractise has been given a death blow in industries controlled by open price associations is averred by all proponents of the open price plan.¹³

By the interchange of information the cement manufacturers have tried to prevent speculation in cement coupled with cancellation of contracts. Purchasers, thinking that from fundamental conditions the price of cement would go higher in the future than at the time of the purchase, frequently have attempted to cover a contract for a certain building or other piece of construction work by placing duplicate orders with different mills and then requiring the entire amount ordered from all mills to be furnished if it should turn out that the price has gone up and on the contrary cancelling out on some pretense or other if it should turn out that the price has gone down.¹⁴

Evidence in the Hardwood Case shows beyond doubt that wholesalers, prior to the initiation of the open price plan, were successfully overreaching producers who were in ignorance of market conditions, but that the operation of the plan prevented them from continuing the practise among members.

One member wrote to the Manager of Statistics as follows:

¹²Johnson, A. S., "Review of New Competition," by A. J. Eddy, *Pol. Sc. Quar.*, Vol. XXVIII, March 3, 1913, p. 143.

¹³Mathews, J. W., Testimony before the New York Joint Legislative Committee on Housing, *Record*, p. 4635.

¹⁴Harrison, L. C., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1716. For further illustrations of malpractises connected with bidding, see account of action taken by the Bridge Builders & Structural Society, *Iron Age*, Vol. XCVI, July 1, 1915, p. 57.

"From my experience as a small manufacturer, this (sales report) is one of the most important services the association has given me. Before becoming a member of the Open Competition Plan, I know I have sold a good many cars of lumber three or four dollars under the market to wholesalers, upon which they reaped the benefit of my ignorance."¹⁵

In an affidavit another small producer made the following statement: "Affiant maintains no sales organization and markets his products largely to wholesalers, possibly 85 per cent of his product being so sold. For this reason, the sales reports of the Open Competition Plan were of especial value to affiant for the reason that the wholesalers from the nature of their business are continually in touch with the market, and when purchasing naturally desire to buy at as low a figure as possible. These sales reports were a check against their statements. By virtue of these reports, affiant states that he was enabled to get nearer the market price from the wholesalers."¹⁶

Lumber manufacturers have undoubtedly been dependent upon the statements of buyers to an extraordinary degree. Unlike grain, cattle, cotton, and many other basic commodities, lumber has no common market. There are no current price quotations, no statistics as to receipts at consuming points, as to production, as to supplies offered, nor of prices asked or bid. The smaller producers, in particular, sell nearly all of their lumber to the wholesaler. By reason of his intimate and daily contact with the consuming trade, the wholesaler has been in a far better position than the manufacturer to know the needs of the market, the market prices, and all the facts which influence prices. It is made peculiarly difficult for the great number of smaller manufacturers to get market information because of their locations. The larger and stronger concerns have, as previously stated, kept in touch with the needs of consumption by means of well organized sales departments.¹⁷

Undoubtedly similar conditions exist in many other industries.

¹⁵Bohlssen, H. C., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, Exh. No. 1138.

¹⁶Nigh, F. H., *Record*, Vol. III, p. 1670.

¹⁷Stark, M. W., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, pp. 1247-1248.

Probably every industry is infested with buyers who profit upon the ignorance of producers by circulating false market information. At least false price reports are current everywhere, however they may have originated, and in the absence of authentic information such as open price associations aim to give members, considerable credence is given to them. Mr. Belt, at one time Chief Accountant for the Federal Trade Commission, once said, "It is unfortunate that false reports as to prices quoted by competing houses are so widely current. Often false price reports are given credence and prices are met which never existed. This practise in the aggregate has a disastrous effect on our commercial health." The remedy, according to Mr. Belt, lies in producers exchanging information, comparing experiences, and discussing trade problems.¹⁸

The Government during the Great War found the trade statistics that had been accumulated by open price associations of immense benefit in determining the manner in which orders for supplies should be allocated among the various manufacturers. Knowing their productive capacity, it was comparatively easy to determine the size of the order that should be given to each of them.¹⁹

Mr. Belt, formerly of the Federal Trade Commission, has pointed out that open price associations have just the kind of information that is needed by the various governmental bodies interested in the affairs of business, including such matters as supply, demand, prices, costs, productive capacity, et cetera. Probably the manufacturers who can show clearly the needs of their industry by means of statistics will receive the most consideration at the hands of bodies dealing with such matters as the tariff, freight rates, and the like.²⁰

We have seen what an important place reports of bids and sales have played in preventing purchasers from overreaching particularly the small producer. Testimony taken in the Hard-

¹⁸Belt, R. E., Address before the American Hardwood Manufacturers' Association of the United States, *American Lumberman*, Feb. 3, 1917.

¹⁹New York *Journal of Commerce*, May 11, 1917, May 16, 1918, Mar. 19, 1920.

²⁰Belt, R. E., Address before the Hardwood Manufacturers' Association of the United States, Jan. 30, 1917, *American Lumberman*, Feb. 3, 1917.

wood Case has brought out the nature of the use made of trade statistics by members of the American Hardwood Manufacturers' Association. With regard to reports of sales the substance of the great bulk of this testimony was to the effect, first, that by informing members of the relative demand for the different kinds, grades, and thicknesses of hardwood lumber, these reports enabled them to adjust their production to suit the demand, thereby avoiding underproduction of some items and overproduction of others; second, that the reports enabled them, in fixing their prices, to follow more closely and quickly the general trend of prices, whether up or down, on the one hand avoiding sales at lower prices than the condition of supply and demand seemed to warrant, on the other hand avoiding prices that seemed higher than the average run of prices, thereby preventing stocks from moving too slowly.²¹

For instance, Mr. F. M. Platter stated, "As to the sales report affiant says that he regarded it as valuable in his business operations. That the data thus furnished tended to keep him informed as to the character of the stocks that were most in demand, and thereby he could more effectively serve consumption demands."²²

Mr. F. H. Stanford found the sales reports of value as indicating the general trend of the market.²³

Mr. E. A. Lang found the sales reports particularly valuable in determining the market value of woods which were infrequently sold: "That such sales reports are of some value to affiant in judging the market price of small items of lumber which constitute only a small percentage of our production, due to the fact that they are generally manufactured from a scattering growth of timber, and having only a few cars of these items to dispose of from time to time, we are naturally not fully informed as to either the volume or market conditions of these items. Such information could doubtless be secured from other

²¹Oral argument of G. Carroll Todd before the Supreme Court of the United States, *American Column & Lumber Co. vs. U. S.*

²²Platter, F. M., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1675.

²³Stanford, F. H., *Record*, Vol. III, p. 1654.

sources, but it would take more time and effort to do so than to get it from the sales reports mentioned."²⁴

In one of the meetings a member explained the value of sales reports to manufacturers who only make a little of any particular wood. He stated that they would not be compelled to sacrifice stocks which they did not handle regularly because by glancing at the sales reports they could ascertain the prices made on this class of stocks by those who were handling it in large quantities.²⁵

Reference to sales reports did not always result in members raising prices. Sometimes they were lowered. Several manufacturers, after consulting sales and stock reports, found it advisable to lower prices in certain instances in order to move their stocks because of the discovery that their prices were out of line with those being asked by competitors.²⁶

Many members found sales reports of greatest benefit when used in connection with the stock reports. Mr. B. F. Dulwever stated "that one of the principal benefits of the sales report and the stock report used jointly was to ascertain the items that were in greatest demand, and the items which were short in supply, and he found these reports of great value to his firm in deciding what thicknesses to manufacture."²⁷

Another member found that these reports furnished him with an incentive to improve the manufacture of his lumber: "He found these reports (sales reports) of use in connection with the stock reports in guiding him along the manufacturing end. For instance, if he found that certain firms were getting prices for certain grades of lumber higher than he could obtain for the same grades, he found almost invariably that it was because their lumber was better manufactured and more strictly graded and better care taken of it in curing and in general. He found these reports of value to him therefore in improving the manu-

²⁴Lang, E. A., *Record*, Vol. III, p. 1647.

²⁵Minutes of Meetings, *Record*, American Column & Lumber Co. vs. U. S., Vol. I. Several members testified to the value of sales reports in determining the market price of small items of lumber; see *Record*, Vol. III, pp. 1647, 1656.

²⁶Dickinson, C. C., *Record*, Vol. III, p. 1710; Stark, W. M., *Record*, Vol. II, p. 1260.

²⁷Dulwever, B. F., *Record*, Vol. III, p. 1565.

facture and care of his lumber. He found the sales reports also of value in showing what territories were demanding certain species and thicknesses of lumber."²⁸

The stock report of the American Hardwood Manufacturers' Association has been described as "one of the most detailed and complete statistical reports published by any association in the world."²⁹

During 1919, at least, members of this association placed more emphasis on the value of the stock reports than they did on sales reports. The reason for this was that in 1919 prices rose so fast that sales reports were not received in time to be of much value as a guide to the trend of the market.³⁰ The chief benefit of stock reports lay in the assistance they gave in determining what kinds of lumber to manufacture and the grades and thicknesses.

Mr. H. B. Weiss testified as follows: "I have found this report of invaluable assistance to me in determining into what particular thicknesses and grades to manufacture our logs. This is a problem that is continually confronting us because our product is not, as a rule, sold until it has been manufactured and conditioned, which is possibly an average of six months after the material is sawed. I have found in the past that in the absence of knowledge of stocks in the hands of my competitors I would instruct our mill to saw a certain thickness, only to find later that the market carried a burden of these particular thicknesses, and it was with great difficulty that they could be marketed, whereas consumers were in great need of some other thicknesses that we could have manufactured."³¹

Mr. M. B. Cooper testified, "that when the monthly report of stocks reached his desk, he invariably checked it over with a view of ascertaining as to what grades and thicknesses were piling up and what grades and thicknesses were becoming scarce, and oftentimes he has changed his sawing instructions to the mill due to the information obtained through these stock reports."³²

²⁸Glenn, E. C., *Record*, Vol. III, p. 1652.

²⁹*Record*, Vol. II, p. 1064.

³⁰*Record*, Vol. III, p. 1633.

³¹Weiss, H. B., *Record*, Vol. III, p. 1665.

³²Cooper, M. B., *Record*, Vol. III, p. 1645.

It may be remarked in this connection that this regulation of output to conform with the consumption demands as revealed by the stock report not only results in a benefit to the manufacturer himself but also to the consumer of lumber, for it leads to the concentration of production on those grades and thicknesses for which there is a heavy demand, instead of the production of grades and thicknesses for which the demand is light, thus preventing an undue increase of prices for such grades and thicknesses as are in demand and at the same time avoiding an undue depression of price of those grades which are not in demand.

Other manufacturers have stressed the value of stock reports in determining whether to hold or sell stocks on hand. In writing of his opinion of the Open Competition Plan, Mr. H. B. Sale said, "We had, previous to the United States entering the war, a customer who had taken our production in Quartered White Oak Strips but since the war his business has so materially decreased that the amount of stock required to meet his production has been very small. We are therefore hunting for a market for such strips. Of course we could dispose of these to almost any manufacturer at the ordinary going price, but have held them for approximately ten months. We would have had to dispose of them at a loss or sold them at the going market price. We examined the stock list carefully and found Quartered White Oak Strips in the hands of manufacturers to be less than normal and therefore continued quoting on inquiries the prices which we had set on them as the price at which we could make a profit on these strips. This price was in excess of the reported going price in the Open Competition Plan, but we were quite satisfied that before sufficient additional production could be put upon the market that the price would come to approximately our price on the stock. This arrived today as evidenced by the duplicate of our shipping order mailed you."³³

Since the American Hardwood Manufacturers' Association did not issue regular production reports, there are no data available which would show how members might have used information pertaining to production. However, there are data to show in

³³Sale, H. B., *Record*, Vol. II, Exh. No. 1132.

the case of other lumber associations what has been done with these and other reports at meetings, with a view of pointing out to members the trend of market conditions. It has been customary with most associations of manufacturers to have a Market Conditions Committee or the secretary make a report based on a comparison between statistics of stocks, production, orders, shipments, et cetera, which members might use as a guide to their production policy. The following extract taken from the Secretary's report at the midsummer session of the Northern Hemlock and Hardwood Manufacturers' Association held in July, 1912, gives a clear idea of the various advantages flowing from a consideration of the different kinds of trade statistics in relation to one another; at the same time it is typical:

"Last January there was 12 per cent more unsold hemlock lumber on hand than on January 1, 1911—due to the very heavy hemlock production late last fall, while there was a slight decrease in hardwood stocks. Taken altogether, the January 1st (1912) reports showed an increase in hemlock and hardwood stocks on hand of 10 per cent over January 1st, 1911. The extraordinary movement of lumber in the last six months, of this year, together with only a normal production, have reversed these figures, so that on July 1st there was four per cent less unsold hemlock on hand than on July 1st, last year, and 28 per cent less unsold hardwood on hand than a year ago. Taking hardwood and hemlock stocks together, sold and unsold, the totals reported by 45 concerns was practically the same this year as last.

"Turning to our cut and shipments reports, from an average of more than 70 firms during the last twelve months, however, we find that during this period hemlock shipments have exceeded the cut by 12 per cent and that hardwood shipments have gone beyond production by 7 per cent, making a total excess of shipments over cut since July 1, 1911, of 10 per cent. It is especially interesting to note that stock reports show 45 per cent less No. 3 unsold hemlock on hand July 1st this year than on July 1st, 1911. Moreover, there has been much more effort on the part of buyers to contract stocks ahead. While large blocks of hemlock are seldom contracted, nearly three times as much

hemlock was sold ahead as on the first of July, 1911. Moreover, at this time, 60 per cent of the total hardwood stock on hand is sold, while a year ago only 50 per cent was sold ahead. More lumber was shipped by the Association members in May than in any other month covered by our records, while the June reports show but a slight decrease from the high mark set by the May shipments. A summing up of the reports by the same firms in the corresponding first six months of this year and last, indicates an increase in hemlock cut of 11 per cent, and increase in hardwood shipments of 41 per cent, a decrease in hardwood cut of 13 per cent, an increase in hardwood shipments of 30 per cent, making up to date this year a decrease in total cut of 2 per cent, and an increase in total shipments of 37 per cent over the corresponding period of 1911. There is no doubt that the total hardwood production in 1912 will be less than in 1911, and so far as can be determined the same will be true of the hemlock cut."³⁴

DISADVANTAGES

The disadvantages connected with open price work may be conveniently grouped under the following heads: first, handicaps to the installation of an open price system; second, negligence of members in the performance of obligations; third, deficiencies in the reporting system.

The two chief handicaps to the installation of open price associations may be attributed to a disinclination of business men to affiliate themselves with such an association and to the obstacles offered by the nature of the industry to be organized. Manufacturers may be deterred from joining an open price association for a number of reasons. A deep seated distrust and suspicion of their competitors may suffice to keep them away, or a misconception of the character of the association, or the expense connected therewith, or a fear of arousing the hostility of customers, or of coming in contact with the long arm of the law. Speaking of the difficulty of installing an open price association, a pioneer in the open price movement says, "It has always proved exceedingly difficult to establish, because suspicion, jealousy, and

³⁴*American Lumberman*, July 27, 1912. A short account of the uses of reports of costs, purchases, labor, credits, etc., may be found in ch. 5, pp. 92-96.

doubt in the minds of competitors must first be done away with. * * * * * In a number of cases the plan has been tried and then dropped because of the narrowminded attitude of rivals."³⁵ As previously intimated, this tendency toward secretiveness has been particularly noticeable in the textile field. The explanation given has been that this business depends for its success to an unusual degree upon the individuality in the goods produced, competitors being therefore reluctant to show competitors the product of their looms.³⁶

Misconception of the character of open price associations is the rule rather than the exception. It is extremely difficult to convince a prospective member that the open price system is not a price fixing scheme. If he is anxious to control prices he may become a member with that end in view. There are nearly always some members of open price associations who are constantly trying to use the association as a means of stifling competition—attempting to bring about agreements that will just avoid the Sherman Law restrictions and still gouge profits unduly.³⁷ Undoubtedly these abusers of the open price system are its worst enemies. Business men who aim to be strictly law abiding, observing, as they do, the unlawful activity of these lawbreakers, jump to the conclusion that all open price activity is stamped with the same illegal character and they are not easily persuaded to join. This is particularly true if their past experience with price fixing plans has been unfortunate. One member of the American Hardwood Manufacturers' Association expressed the feeling of this class of men when he wrote to the Manager of Statistics as follows:

"Our experience with various price fixing plans in the early days were humiliating and costly, and for that reason we stood off from this Open Competition Plan for some time, but we finally went into it, the exact date we do not remember."³⁸

The expense involved in belonging to an open price association

³⁵Gaunt, E. H., "An Open Price Plan for Woolens and Worsteds," *Textile World Journal*, Apr. 8, 1916, p. 1709.

³⁶New York *Journal of Commerce*, May 22, 1919.

³⁷New York *Journal of Commerce*, Dec. 14, 1916.

³⁸Nigh, W. H., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, Exh. No. 1127.

will prevent some business men from affiliating. The cost of running such an association as estimated by Babson's Statistical Organization is modest. They state that the cost of organization began in one case with a fee of \$3000.00 for counsel, that the first expenses were rather large, but that \$700.00 a month should cover all expenses. Of course this was written in 1915 when the price level was considerably lower than it now (1921) is, and the figures were probably given for an association with a membership of not more than twenty-five.³⁹ Notwithstanding these circumstances, the pro rata expense cannot be considered unduly heavy and probably is not a serious drawback to the spread of the open price movement.

The fear of arousing the opposition of buyers is, in some cases, at least, a powerful deterrent to the spread of the movement. In the textile industry, in particular, this opposition has assumed formidable proportions. In this field the opposition has been inspired either by the knowledge on the part of buyers that open price methods would prevent them from making further profits as a result of the ignorance of sellers, or it has been inspired by the feeling, fostered, first, by the secret methods pursued by some so-called open price associations; second, by the indiscreet talk of certain members of these associations, that they were being made the victims of what amounted to a conspiracy to maintain prices.

The following extract taken from an editorial which appeared in the *New York Journal of Commerce*, December 14, 1916, pictures the situation as viewed from the standpoint of the buyer who feels himself victimized: "What has occurred in certain trades is this: the manufacturers have laid certain cards on the table, but they are hiding every detail of the game from the buyers who are their customers. This is a violation of the open price spirit and gives justification for a suspicion that things are not in accordance with the law. Statements to the effect that no violation of the law is intended will not convince buyers who feel that they are entitled to know most of the influences that affect the value of the merchandise they want to buy.

³⁹Babson, R. W., *Reports on Coöperation*, C. C-3.

"Within a short time certain manufacturers who are in trade organizations have done considerable boasting as to what they proposed to do to buyers because of their new allegiance to the principles of the open price movement. A doubt exists as to whether these manufacturers really know what an open price association can do and how easily their membership in such a body, taken in conjunction with statements of the character indicated, can land all hands in jail."⁴⁰

The attitude taken by the National Association of Purchasing Agents toward the open price movement is indicated in the extracts taken from a letter received by the writer which follow:

"The question came up indirectly in our last convention, when a proposal was made that we organize a bureau to report the orders placed and prices paid by our members in various localities for specific commodities. After mature discussion and later consideration by the Executive Committee, it was decided that such a plan offered prospects of violation of the existing laws against unfair competition and the matter was therefore definitely dropped by our association.

"I am reasonably confident that there are no associations of purchasing agents engaged in any way in open price work. On the whole, the viewpoint of purchasing agents is opposed to such association activities. The real function of the open price association, as we see it, is to permit producers to charge for their commodities not on the basis of their production costs or real competition values, but on a basis of all that the market will stand. Naturally purchasing agents cannot be expected to sympathize with this viewpoint."⁴¹

Fear of Government action is perhaps the most powerful deterrent to the spread of open price work. In this connection, Mr. Belt, formerly Chief Accountant for the Federal Trade Commission, once said, "As a result of the conflict in the past between business men and the Government, many business men have become suspicious of coöperation and are led to think that because some forms of coöperative effort have been condemned

⁴⁰New York *Journal of Commerce*, Dec. 14, 1916.

⁴¹Boffey, L. F., Secretary, National Association of Purchasing Agents, Letter dated Feb. 11, 1921.

the Government was opposed to all forms of coöperation. Unfortunately, as a result some are reluctant about joining their trade associations for fear that they would be censured by the Government for meeting with their competitors."⁴²

A further deterrent is due to the weakness of the voluntary association. The indiscreet remarks of one or two members may involve the whole association in litigation.⁴³

The nature of the industry may be such as to make it exceedingly difficult to do open price work with any degree of success. There may be too many different articles or styles or grades; or the competitors may be too numerous and widely separated. Mr. R. H. Bennett, secretary of the California Wholesale Grocers' Association, writes: "With my wholesale distributive constituency openness of price information is impracticable, by reason of the great number and variety of articles handled, the purchase of fluctuating possibilities, and quality differences."⁴⁴ Members of the Pennsylvania Division of the National Association of Hosiery and Underwear Manufacturers once discussed the practicability of adopting the open price system but the project was abandoned as sentiment was general that the great variety of styles and grades characteristic of the underwear industry would require too complicated a system to make it of any value to the members.⁴⁵ The American Hardwood Manufacturers' Association found the effectiveness of its work exceedingly impaired because of the great number of competitors in the hardwood industry and because of the fact that they were for the most part isolated from one another. The industry, in 1912, comprised between 12,000 and 15,000 independent units. These units were scattered over practically the entire United States east of the Mississippi River and west of the Mississippi in the States of Missouri,

⁴²Belt, R. E., Address before the American Hardwood Manufacturers' Association of the United States, *American Lumberman*, Feb. 3, 1917. The attitude of governmental bodies is discussed in ch. 8, pp. 188-193.

⁴³This matter is discussed in ch. 4, pp. 50-53.

⁴⁴Letter dated Dec. 20, 1920.

⁴⁵Bi-monthly meeting of the Pennsylvania Underwear Manufacturers' Division of the National Association of Hosiery and Underwear Manufacturers, Jan. 13, 1917, *Textile World Journal*, Jan. 20, 1917, p. 35.

Arkansas, Louisiana, and Texas. Effective coöperation between all of these units was 'well nigh impossible.'⁴⁶

The National Bottle Manufacturers' Association found it impracticable to adopt the open price system in its entirety for the reasons, as expressed by the secretary that, "the open price plan can only be successfully operated under certain conditions. These conditions require a comparatively small membership—a fairly large unit of sale—and a uniformity of product. In our case we have a rather large membership, there being about fifty subscribers to our special fund. There are a great many medium and small sized sales so that the volume of business to be recorded would be very large; and finally we have a wide diversity of interest among the members. Some members are making only one class, others are making three or four, while others make all eleven classes. Because of these conditions we feel it would not be a practical plan to even consider the operation of the open price plan for the main association."⁴⁷

The negligence shown in the performance of obligations is of sufficient gravity to lead some persons to believe that the voluntary form of association is doomed to failure on this score alone.⁴⁸ This negligence is chiefly marked, first, by poor attendance at meetings; and second, by extreme laxness in furnishing the required reports to the secretary. Laxness in furnishing reports may be due either to carelessness, indigence, or a deliberate resolve to withhold certain kinds of information.

One cannot read the accounts of open price meetings given in trade journals without noticing that secretaries are constantly bemoaning the failure of members to attend meetings. Of the 329 members who belonged to the American Hardwood Manufacturers' Association, 120 never attended a meeting and 50 attended but one meeting.⁴⁹ The Armstrong Bureau of Related Industries

⁴⁶Gadd, F. R., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1098.

⁴⁷Stevenson, C. R., *The Elimination of Unfair Competition*; address delivered before the National Bottle Manufacturers' Association, May 1, 1920.

⁴⁸Mr. Armstrong of the Armstrong Bureau of Related Industries voices this opinion.

⁴⁹Argument of L. C. Boyle in the Supreme Court of the United States, American Column & Lumber Co. vs. U. S., p. 34.

has sought to insure better attendance at meetings by imposing fines on those who absent themselves or come tardy.

Secretaries also are constantly admonishing members to be more prompt and regular in submitting reports. In this connection the secretary of the Northern Hemlock and Hardwood Manufacturers' Association writes, "We now have about ninety members, and of these about fifty are reporting their sales and these are the only ones who receive the information in the Sales Bulletin. It is open to any of the others whenever they desire to report their sales. If this requirement were not made, it would be very difficult to get any of the firms to make the reports."⁵⁰

The secretary of the California White & Sugar Pine Manufacturers' Association writes, "We have never yet had fifty per cent of our members submit statistics effective the same date and those received are never complete. With regard to prices, we have requested members to send in to this office copies of their orders to be tabulated and returned to them at weekly intervals. At the present time about five out of forty-eight are doing this."⁵¹

In one of their meetings, the secretary of the West Coast Lumber Manufacturers' Association said, "It is to be regretted that we cannot get all the mills to report within reasonable time. * * * * * Some of the reports for as far back as October, 1912, are not in yet, and we are still working on them. We have sent as high as six requests without receiving any reply."⁵²

Mr. Wm. J. Mathews, counsel for several of the Eddy associations, admitted before the Lockwood Committee that members did not always make a report to the secretary of corrected bids.⁵³ There is hardly an open price constitution, coming within the notice of the writer that does not take cognizance of this negligence in reporting by providing that members who do not furnish information shall receive none. In addition, members of the Knit Goods Manufacturers are required to sign a statement reading as follows: "I hereby agree that I will be responsible either by

⁵⁰Swan, O. T., Letter dated Jan. 4, 1921.

⁵¹Smith, C. Stowell, Letter dated Dec. 3, 1920.

⁵²This report was made in 1913 at the March meeting. See *American Lumberman*, April 5, 1913.

⁵³Testimony of Wm. J. Mathews, *Record*, New York Joint Legislative Committee on Housing, Dec. 29, 1920, p. 4635.

personal attention or delegation to some particular person in my employ to see that any and all quotations, prices, rebates, or any other condition covering quotation or sales which differ in any way from prices, conditions, etc., on file at any time with the Association are forwarded to the office of our Association within twenty-four hours from the time such changes are made. I further agree that this agreement is binding as long as my mill is a Regular Member of the Knit Goods Manufacturers of America."⁵⁴

In some quarters, at least, members appear to be intentionally deceiving other members about the nature of their transactions. This is done by omitting from their reports any low sales or exceptional discounts that may have been made. This abuse is of a most serious character because it tends to undermine the spirit of confidence and trust that must be developed to a considerable degree before much progress in open price work can be made. One open price secretary informed the writer that dishonesty in reporting is very prevalent, and is to be ascribed, he thought, to the fact that members are ashamed to turn in reports of low sales. In the textile industry complaints frequently arise that members do not report discounts that have been made. One important textile manufacturer is quoted as saying, "I do not want my fabrics filed with this Association. It might be different if you could get the whole truth from all competitors, but do you think that sellers are going to tell the five per cent 'inside' they are giving John Jones or the ten percent that Tom Smith gets? To be sure they will report the open market price, but it is just these private terms that make competition so hard in the marketing of wool goods, and they will be just as much of a factor whether there is an open price association or not."⁵⁵

In one of the meetings of the Michigan Hardwood Manufacturers' Association the Secretary gave vent to the following vigorous language: "In this connection it is well to state that certain members of the Committee have knowledge of sales made by a

⁵⁴"Amendment to Constitution, Knit Goods Manufacturers of America," *Textile World Journal*, May 17, 1919.

For other instances of negligence in reporting, see *American Lumberman*, Feb. 10, 1917, Mar. 29, 1913, Nov. 2, 1912.

⁵⁵*Textile World Journal*, Aug. 12, 1916, p. 20.

few members at low prices that have not been reported to the secretary. No one is obliged to get the list prices, but everyone has a moral obligation to report all sales. There is absolutely no other accurate way to determine the market conditions, and it is a distressing commentary on the loyalty of some of our members to say that this committee must "gumshoe" around the trade for price-sale information. Any member sacrificing stock does himself and the association less injury by frankly acknowledging the transaction than he does by covering it up. Any member who persistently covers up such transactions may justly be suspected of trying to take advantage of other members who are not only trying to get a fair price for their goods but who also, when necessity constrains them to a sacrifice, make a report of it to the Association, thereby putting all members in a position to know the real conditions. Secrecy will ultimately reflect more real injury upon the culprit than upon his associates whom he has misled by his silence."⁵⁶

At the time when, with the help of Mr. Eddy, the old Yellow Pine Association was being reorganized into what later became the Southern Pine Association, it was brought out in the presence of Mr. Eddy that under the old form of association the practise had been to send to the secretary copies of all orders, but that very soon it developed that only a few of the large operators sent in this information, and that they reported only the cream of their orders.⁵⁷

Cognizance of this abuse is taken in some constitutions. One constitution, for example, provides that members who file misleading information will be dropped from membership.⁵⁸ Another means often resorted to in order to encourage honesty in reporting is to show no figures of individuals in the compiled reports issued from the secretary's office.

The reporting system is in many instances deficient because reports are either inaccurate, or obsolete or the information contained therein is not comparable. Some secretaries have frankly admitted to the writer that members are not as careful about

⁵⁶*American Lumberman*, Oct. 23, 1915.

⁵⁷*Ibid.*, Dec. 20, 1913.

⁵⁸*By-Laws*, Society of Manufacturing Confectioners, Sec. 8.

submitting accurate reports as they should be. Oftentimes the fault is due, not to carelessness, but to an inadequate system of account keeping which makes it nearly impossible to submit anything more than mere estimates.

If the industry is such that wide and sudden fluctuations occur in the price of the product, it is found difficult, if not impossible, to put sales reports in the hands of members in time to be of any value in gauging the trend of the market. This is particularly true if the membership is large and widespread, as was the case with the American Hardwood Manufacturers' Association. Because of the vast number of reports of sales to be arranged and compiled, the Manager of Statistics found it impossible to mail reports to members oftener than once a week. The reports came out too infrequently to be of use as a guide in quoting prices. This was particularly true in the latter part of 1919 and the early part of 1920 when prices for lumber rose almost daily. Considerable testimony was given to show the obsolete character of these sales reports. A few of the more representative statements are as follows:

Mr. J. T. Holloway testified, "As to the Sales Report, affiant says that under normal conditions these data would be of value in that they would give a mill operator an understanding of the market tendency. However, under the abnormal conditions that have existed for the last four or five months, the Sales Reports are practically of little value, because when they reach the members they are from ten days to two weeks old and the data are such past history that they are of no practical worth."⁵⁹

Mr. S. A. Williams said, "Affiant states that he has always carefully read the sales reports issued by the Open Competition Plan, but he has found that they report sales as of ten days to two weeks past, and that they do not reflect the present condition of the market at the time of reading, and consequently the benefit derived was exceedingly limited. It is the opinion of affiant that any lumber producer using the prices reported in these sales reports as a guide would in the majority of cases in the past few

⁵⁹*Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1661. This affidavit was filed Mar. 9, 1920.

months at least have sold his lumber for \$5.00 to \$10.00 per thousand under the market."⁶⁰

G. W. Everts testified: "In reference to the sales reports affiant desires to state that he considers that the sales data exhibited by this sales report are from one to two weeks behind the current market, but affiant states that he does consider the reports of value as indicating the trend of market conditions, but that, in so far as being an accurate guide as to what today's prices are, they are of very little assistance, and this as stated on account of the rapid changes due to the enormous demand and the lack of hardwood supplies throughout the country."⁶¹

In many cases it is found extremely difficult to get products so standardized as to make reports of sales comparable; hence their effectiveness is very materially diminished. Such was the case with reports of sales issued by the American Hardwood Manufacturers' Association. The whole lumber industry has made tremendous strides in the standardization of grades, yet the specifications laid down are not so exact but that there may be found differences in the quality of lumber within each grade. These differences are enough to detract considerably from the value of sales reports as is indicated by the following testimony:

Mr. H. G. Garrett said that, "the difficulty with reported prices lies in the lack of uniformity of grade in hardwood lumber. As a concrete example affiant states that in the grades of lumber, he has frequently found it cheaper to pay some manufacturers from \$10.00 to \$15.00 a thousand more for the so-called same grade than others whose lumber, tho of the same alleged grade, is really of inferior quality."⁶²

One firm wrote to the Manager of Statistics as follows: "We are young in the hardwood game, but find more or less manipulation of grades, and this reduces the value of the price information, as a mill selling No. 1 Oak at \$25.00 at the mill may actually be receiving more money for his stock than some other mill, that has accepted an order for a National grade at \$28.00."⁶³

⁶⁰*Ibid.*, Vol. III, p. 1639. Affidavit filed Mar. 9, 1920.

⁶¹*Ibid.*, Vol. III, p. 1633. Affidavit filed Mar. 9, 1920; see also Vol. III, pp. 1530, 1563, 1639.

⁶²*Record*, Vol. III, p. 1722.

⁶³Williams, S. A., *Record*, Vol. II, Exh. No. 1154.

The list of disadvantages here reviewed is sufficiently formidable to make it appear that the fate of open price associations in some industries, at least, is somewhat uncertain.⁶⁴ Probably all of the disadvantages named are not applicable to all open price associations. Undoubtedly the larger associations find themselves more harassed in this respect than do the smaller ones. In the opinion of the writer the most serious weakness of open price work as it is conducted is the exhibition of a lack of good faith among members, displaying itself chiefly in an attempt to deceive each other by filing misleading information. This attitude is undoubtedly a heritage of the old competitive regime. Imbued as they have been with an antagonistic spirit toward one another, venting itself in falseness and trickery, it would be a matter of surprise if this feeling should have died out in the short space of the nine years in which open price work has been in existence.⁶⁵ It is thought that as members become truly educated to the advantages accruing from open price work and come to realize that this work cannot thrive in the presence of falseness, deceit, and laxness of performance of duties, they will drop the practises which now seem consequential enough to threaten the very existence of the open price institution. The open price movement is still too much in its infancy to warrant one in basing predictions of its success or failure on any data so far accumulated.

⁶⁴The uncertainties attendant upon the doubtful legality of open price work are reserved for later discussion. See ch. 8, pp. 161-175.

⁶⁵This statement is made in 1921.

CHAPTER VII

OPEN PRICE ACTIVITY IN THE LUMBER INDUSTRY

The wealth of data disclosed by recent government investigations in the lumber industry taken together with the vast amount of evidence collected in the case of the United States vs. the American Hardwood Manufacturers' Association renders it possible to get a view of the operation of the open price system in this industry such as no other industry has yet afforded.

In another connection¹ it has been pointed out that open price work in the lumber industry is almost entirely limited to associations of manufacturers. In a survey made by the *American Lumberman* in 1917 it was found that twenty-seven associations of manufacturers were in existence at that time. The highest membership of any one of these organizations reporting was 892; the lowest, ten. There was an average percentage of fifty-eight members to one hundred eligibles. The average age of the associations was 8.86 years. Twenty-two associations were organized previous to 1917. Of the twenty-seven associations two were organized in 1889, one in 1891, one in 1897, but all the others are less than twenty years old and seventeen less than ten.²

A few of the more unimportant associations appear not to have operated open price systems, but the leading ones have done so. The recent investigation of the Federal Trade Commission disclosed that all of the principal regional associations belonging to the National Lumber Manufacturers' Association have been doing open price work.

These are (1) the West Coast Lumbermen's Association (manufacturers of Douglas fir lumber); (2) Western Pine Manufacturers' Association (manufacturers of western white and yel-

¹See ch. I, *Prevalence of Open Price Associations*, p. 3.

²*American Lumberman*, June 9, 1917, p. 40.

low pine); (3) Northern Hemlock and Hardwood Manufacturers' Association (manufacturers of hemlock and hardwoods in Wisconsin and upper Michigan); (4) Michigan Hardwood Manufacturers' Association (manufacturers of hemlock and hard woods in the lower peninsula of Michigan); (5) Northern Pine Manufacturers' Association (manufacturers of Minnesota Northern pine); (6) North Carolina Pine Association (manufacturers of North Carolina pine); (7) Georgia-Florida Saw Mill Association (manufacturers of short leaf yellow pine lumber); (8) Southern Cypress Association (manufacturers of cypress lumber); (9) California Sugar and White Pine Manufacturers' Association (manufacturers of sugar and white pine lumber); (10) Southern Pine Association (manufacturers of yellow pine lumber).³

The only important association of manufacturers doing open price work that is not affiliated with the national organization is the American Hardwood Manufacturers' Association.

The sole connection that the national association has had with the open price system has been to receive statistics of various kinds from the regional associations, particularly those of production, these being summarized and the summaries distributed to the lumber manufacturers through the regional associations.⁴ The American Hardwood Manufacturers' Association offers the only instance where an association has been organized to do open price work. The other lumber associations have installed the work as a departmental activity.

No doubt the followers of Mr. Eddy would assert, and with much truth, that the lumber associations are not true to the standard type of open price association, because most of them have attempted to do more than merely inform members about past transactions. By issuing price lists and discount sheets they have tried to induce members to adopt a uniform or rising scale of prices. Practically every lumber association has resorted to this illegal practise at one time or another. The recent report of the Federal Trade Commission shows that there has been

³*Preliminary Report of the Federal Trade Commission on Activities of Lumber Manufacturers' Associations*, Jan. 10, 1921, p. 2.

⁴*Ibid.*, p. 3.

more or less concerted action among members, working through committees, in issuing price lists and discount sheets.⁵

On June 18, 1919, Mr. Howard Jayne, of the Willappi Lumber Company, a member of the Committee on Values, wrote Secretary Babcock of the West Coast Lumbermen's Association, in part: "With reference to the work of the Price Committee of the Association, I am afraid my ideas are not in accord with the Committee, in that I personally feel quite opposed to coming out with so many discount sheets, with such radical advances. It seems to me the market is in a shape where it is profitable to all parties concerned on a basis of discount sheet No. 5, and that from that point on it should be a case of the mills asking a price commensurate with their ability to deliver it. Perhaps it is true that discount sheet No. 6 conforms to the present market conditions, in fact we have sold items on that basis; nevertheless, we believe concerted action on the part of the mills should be dropped from now on."⁶

According to the version of the Federal Trade Commission, sales reports were issued to enable members to compare the actual prices obtained with the prices quoted in the uniform discount sheets.⁷ If any manufacturer interfered with the market price of lumber by quoting a lower price, he was immediately notified by some manufacturer of the discount sheet in effect, together with other general information which would encourage him to obtain full list prices.⁸

In 1919 the Michigan Hardwood Manufacturers' Association submitted the plan of issuing price lists and discount sheets to Mr. L. C. Boyle, General Attorney of the National Lumber Manufacturers' Association, for his opinion. Mr. Boyle replied, "As a conservative and precautionary method I am urging your group to abandon your price list plan. . . . I know that it is not the purpose of your plan to fix the price. Your members are free to sell at any price they please, nevertheless, when your

⁵I. e., *Preliminary Report of the Federal Trade Commission on Activities of Lumber Manufacturers' Associations*.

⁶*Ibid.*, p. 66.

⁷*Ibid.*, p. 68.

⁸*Ibid.*

committee publishes a higher price than the current market, based upon its conception of market tendencies, it is in fact putting out figures that are at least to be shot at by the trade and to that extent indirectly doing that which tends to control prices to a higher level."⁹ It may be remarked that as a result of this opinion, no substantial change was made by the Michigan Manufacturers in the method of supplying information.¹⁰ The Federal Trade Commission gave evidence to show that other leading associations were pursuing similar methods.¹¹

Open price associations organized by Mr. Eddy or his disciples do not permit "suggested" price lists to be issued by the central office. Any price information that is disseminated must be based on prices actually quoted by members.

THE YELLOW PINE ASSOCIATION

To recount the origin, history, organization, and operation of each of the many important associations of lumber manufacturers would require a volume in itself.¹² However, one must needs devote some attention to the early history of the Southern Pine Association, known before 1914 as the Yellow Pine Association, because, first, an important decision was rendered by the Supreme Court of the State of Missouri with reference to this association, and this decision has a bearing on the legal aspects of open price work; second, the activities in which it has been engaged reflect pretty accurately those engaged in by many of the other lumber associations; third, it is one of the oldest as well as one of the most important of the lumber associations in existence.

The Yellow Pine Association first had its origin among cer-

⁹*Preliminary Report of the Federal Trade Commission on Activities of Lumber Manufacturers' Associations*, pp. 80-81.

¹⁰*Ibid.*, p. 82.

¹¹For an account of the price activities of (1) the West Coast Lumbermen's Association, see *Report*, pp. 57-68; (2) the Western Pine Manufacturers' Association, pp. 69-74; (3) the Northern Hemlock and Hardwood Manufacturers' Association, pp. 74-78; (4) the Michigan Hardwood Manufacturers' Association, pp. 78-86; (5) the Southern Pine Association, pp. 18-54; (6) the Georgia-Florida Saw Mill Association, p. 41.

¹²An account of their earlier history may be found in a *Report on the Lumber Industry by the Bureau of Corporations*, April 21, 1914, Part IV.

tain manufacturers and wholesalers in Southern territory in 1890. In 1906 membership was limited to yellow pine manufacturers and wholesale dealers. About that time the membership was close to three hundred and represented a yellow pine cut of nearly four billion feet out of a possible nine billion feet. It was a voluntary organization, had a written constitution and by-laws, board of directors, president, first vice-president, treasurer, and secretary. Their duties were those which ordinarily go with their respective offices. In addition there were permanent committees on "Grades", "Weights", "Values", "Good of the Association", "Resolutions", "Membership", "Revenue", "Auditing of Accounts", "Terms of Sale", and "Price Lists".¹³

The objects, as shown in the section of the constitution added in 1906, were "to secure a full understanding of the conditions surrounding the lumber market in the territory covered by this association; to adopt uniform grades for the inspection of lumber; to promote uniform customs and usages among manufacturers of lumber; to procure and furnish to these members such information as may tend to protect them against unbusinesslike methods of those with whom they deal, and such other information as may be found for the benefit of members; and to propose and carry out such other measures as may be deemed for the welfare and in the interest of manufacturers of lumber who shall be members of the association."¹⁴

This association was one of the pioneers in classifying lumber into uniform grades and sizes. By a system of rigid inspection it was able to enforce among manufacturers of yellow pine its rules pertaining to grades, sizes, and weights. What is more important from the point of view of open price work is that these inspectors, employed by the association, kept the central office informed as to the actual amount of yellow pine in stock among members. In addition, each of the members furnished the central office with reports of stock, lumber manufactured, and shipments made. Thus the secretary knew the amount of lumber being manufactured, by whom, the amount being sold,

¹³*Report of the Commissioner of the Court, State vs. Arkansas Lumber Co. et al.*, 169 S. W., p. 154.

¹⁴*Ibid.*, p. 152.

by whom, and the amount of stock remaining in the hands of each respective manufacturer. This information was disseminated from time to time among the membership by mail or at meetings.¹⁵

The feature of the association's work which probably is of most interest to the student of open price systems is its price activity. Here is found what is undoubtedly, among lumber associations, the earliest instance of the issuance of price lists. From its organization in 1890 the association issued price lists to members, and to the trade.¹⁶ They were published in booklet form to 1906, and subsequently as a market report. The work of preparing the list was done by a committee until 1906, when it was turned over to the secretary. In order to aid him in getting out the price list, members were requested to submit, occasionally, reports of sales. Another purpose in calling for these reports was to determine if members were observing the association price list. The procedure followed was for the secretary to mail to each member a sheet, which was a copy of the price list in force, with a blank column at the right of the column of prices quoted. The correspondent in answering, if selling or offering at the figures contained in the price list, would make no change upon the sheet. If there were items which he had sold that were lower than the list, he would insert the prices at which he had sold or was offering in the space in the blank column opposite the item; if higher than the price list, the same method was employed.¹⁷ With this information as a basis, the secretary would issue his price list or discount sheet. The new prices named were usually "boosting" prices.¹⁸ Witnesses for the State testified that with the issuance of a market report, the dealers had to pay the prices named therein.¹⁹ However, members of the association did not all abide by the prices listed. Those who were not financially strong felt impelled to move

¹⁵*Ibid.*, p. 154.

¹⁶*American Lumberman*, June 22, 1912.

¹⁷*Report of the Commissioner of the Court, State vs. Arkansas Lumber Co. et al.* 169 S. W. p. 156; also *American Lumberman*, June 20, 1912.

¹⁸*Report of the Commissioner of the Court*, p. 159.

¹⁹*Ibid.*

their stocks quickly by cutting below the list in order to get ready cash with which to meet obligations.

The court found members of the Yellow Pine Association guilty not only of fixing prices to be charged for yellow pine lumber, but of curtailing output by agreement and concerted action.²⁰ The reports of production, shipments, and stocks were a ready instrument with which to consummate this conspiracy to curtail production. Concerted action was secured at meetings. In 1904 a resolution was passed to the effect that each member should curtail his output thirty-three and one-third per cent for a period of ninety days. A large number acted in accordance with the resolution.²¹ The monthly reports of cut, shipments, and stocks received by the secretary were used as a check in determining how well members were complying with the resolution. After the first period had elapsed, a second period of curtailment of ninety days was recommended with like results.²²

As late as 1912, three or four years after suit had been brought against members of the Yellow Pine Association, they continued to exhort each other to cut down production and boost prices. The character of these so-called "experience" meetings is pretty clearly shown by the following extracts from their round table discussion:

"Things are looking fine for a good year's business if we do not get in a hurry for our golden eggs and kill the goose ourselves. I can say as a general thing for my Texas brethren in the lumber business that they are not taking that step. For the last 60 days I have interviewed every traveling man in the machinery and supply lines and every lumberman coming into the office, and up to the present time I have not found a single instance of anybody increasing his production. If that policy is followed I look for a better year than even the famous year 1907."²³

Mr. F. G. Dickman said, "We closed orders day before yes-

²⁰Suit was begun in 1908; final judgment was rendered in 1914.

²¹*Report of the Commissioner of the Court*, p. 160.

²²*Ibid.*

²³Speech of Eli Wiener at monthly meeting of Yellow Pine Association, quoted in *American Lumberman*, July 6, 1912, p. 41.

terday for export which will run us to September and we are not going to run nights or overtime to make that up.”²⁴

Mr. S. H. Fullerton said, “My experience is much the same as others who have spoken. I think the tide has set onward and upward and that prices of lumber will steadily advance. . . . After hearing the talks here I think I will go home and get our sales manager to put up prices about \$1.00 a thousand. I do not see what is the use of realizing that this situation is on us unless we can take some advantage of it. I see my friend Johnson sitting here and I expect he will put his price up about \$1.50 in order to save some of it for a higher price later.”²⁵

In handing down his decision, the judge drew a line of distinction between proper and improper price activities and incidentally passed judgment in favor of open price activity as conceived by Mr. Eddy and his followers. This is the only ruling that has yet been made by any State court bearing directly on the legality of exchanging information about past transactions.

In giving his opinion he said, in part, “A price current may be issued under the Missouri Anti-trust laws, but the list or compilation ought either to be compiled and promulgated by an indifferent or wholly disinterested person, or if compiled and promulgated by an interested person, it ought to be honestly and fairly compiled; it ought fairly to represent current prices as based upon actual sales, or upon actual offers to sell, and not misrepresent such prices with a view of boosting any prices of any item or items.

“If Smith, the secretary of the association, pursuing the lawful methods originated by him of obtaining reports from correspondents of actual sales, had fairly compiled and averaged such reports into a list of current prices of yellow pine lumber, we would not say that Smith’s acts or acts of the association in this behalf were unlawful.”²⁶

The judge imposed heavy fines on many of the leading manufacturers. The Yellow Pine Association was disbanded, only to be immediately reorganized, with the help of Mr. Eddy, under

²⁴*Ibid.*, p. 41.

²⁵*Ibid.*, p. 42.

²⁶Opinion of the Judge, *State vs. Arkansas Lumber Co. et al.*, 169 S. W., p. 177.

the name of the Southern Pine Association. Of the open price associations that have been mentioned this association is the largest in point of membership with the exception of the American Hardwood Manufacturers' Association. There were approximately two hundred members in 1918. Since the scope of its activities is very similar to that of the American Hardwood Manufacturers' Association, whose activities are to be reviewed later in this chapter, this subject will be omitted.²⁷

The history of the Yellow Pine Association illustrates with what readiness the open price system may be made a tool in the hands of those who would pervert its use in order to accomplish results at once unlawful and injurious to the public.

THE AMERICAN HARDWOOD MANUFACTURERS' ASSOCIATION

The American Hardwood Manufacturers' Association, before it recently ceased doing open price work,²⁸ was the largest open price association in existence. Early in 1920 its membership comprised 383 manufacturers, who operated approximately 465 out of an approximate total of 9,524 mills engaged in hardwood manufacture in the United States, and their output was about thirty-three and one-third per cent of the total production in the United States.²⁹

This association came into existence January 1, 1919, as a result of the amalgamation of two associations of hardwood manufacturers, the Hardwood Manufacturers' Association of the United States, with headquarters in Cincinnati, organized in 1902, which drew its membership in the main from the eastern part of the United States; and the American Hardwood Manufacturers' Association, with headquarters at Memphis, organized in 1917, as a consolidation of two smaller groups, which drew its membership almost entirely from the southern part of the United States. The two smaller groups were the Gum Lumber Manufacturers' Association, organized in 1914, and the American Oak

²⁷A review of its activities may be found in the *American Lumberman*, March 26, 1920, p. 53.

²⁸In March, 1920, the Federal Court for the Western District of Tennessee granted an injunction restraining members from engaging in open price activity. See ch. I, pp. 4-5.

²⁹*American Lumberman*, March 13, 1920.

Manufacturers' Association, organized in 1916. Each of these small groups did open price work from their inception.³⁰ The open price plan operated by the American Hardwood Manufacturers' Association since January 1, 1919, was that adopted by the American Hardwood Manufacturers' Association of the United States, March 1, 1917.³¹ The reason for the amalgamation was that these two groups, to-wit, the Hardwood Manufacturers' Association of the United States and the American Hardwood Manufacturers' Association, had an intermingled membership, and were doing more or less the same character of work. It was thought that by avoiding duplication of work much expense could be saved the members.³²

The objects and purposes of the American Hardwood Manufacturers' Association, as expressed in its constitution, are "to secure a full understanding of conditions surrounding the Hardwood Industry; to adopt such measures as will provide for uniform standards and improved methods of manufacturing and marketing Hardwood Forest Products; to acquire, preserve and disseminate information in connection therewith; and to generally promote the interests and welfare of Hardwood manufacturers."³³

Membership is limited to manufacturers of hardwood forest products. Each member is entitled to one vote, and this vote must be cast in person or by an authorized representative of the firm; proxies are not permitted. A majority vote of the board of directors is sufficient to elect an applicant to membership. The board of directors has the power to expel any member for cause, by a majority vote.

Upon being elected into membership, members must pay an initiation fee of \$25.00. Dues are graduated according to the volume of production. The rate of dues is fixed by the Board of Directors and are assessed annually by a committee on

³⁰An account of the open price work done by the Gum Lumber Manufacturers' Association may be found in the *American Lumberman*, May 23, 1914. For accounts of the organization and operation of the American Oak Manufacturers' Association, see *American Lumberman*, Nov. 14, 1916 and Jan. 27, 1917.

³¹Stark, M. W., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1249.

³²Gadd, F. R., *Record*, Vol. II, p. 1100.

³³*Constitution*, Art. 2, *Record*, Vol. II, p. 1293.

assessments. They are payable in monthly installments, and any member failing to pay any installment within thirty days after it is due, is subject to suspension.³⁴

The officers of the association consist of the president, first and second vice-presidents, treasurer, secretary-manager and twenty-one trustees. The president, vice-presidents and treasurer are elected annually by the membership; the trustees, every third year. The secretary-manager is appointed and has his salary fixed by the board of directors. The latter consist of the elective officers and trustees. The executive committee is made up of the president and six of the directors. The latter are appointed by the president at the annual meeting, and serve one year, their appointments being subject to the approval of the board of directors. The duties of officers and directors are those which ordinarily go with their offices.³⁵

In addition to these officers and directors there are a number of standing committees appointed annually by the president, subject to ratification by the members. The scope of the activities of the association is pretty well indicated in noting the scope of the activities of these permanent committees.

The committee on membership takes such steps as are necessary to increase the membership of the association, and passes upon the eligibility of those making application for membership. The committee on assessments assesses the annual dues. The committee on advertising passes upon and handles the advertising programs of the Association. The committee on finance audits the books of the association and supervises financial matters in general. The committee on resolutions handles matters which would properly come before such a committee. The committee on reports and statistics works out plans for securing and tabulating such information and statistics as will be of value to the membership. The committee on inspection rules deals with all matters pertaining to inspection and grading. Then there is a committee representing the interests of each wood, which undertakes to promote and take charge of such scientific and commercial investigations as will inure to the benefit of the

³⁴*Constitution*, Art. 3, *Record*, Vol. II, p. 1293.

³⁵*Constitution*, Art. 8, *Record*, Vol. II, p. 1297.

manufacturers of that wood. These woods are gum, oak, poplar, ash and hackberry, cottonwood, chestnut, elm, maple, cypress, hickory and pecan, walnut, and sycamore. There is another committee which exists to promote the interests of manufacturers of sawn and sliced veneers, and another for manufacturers of commercial rotary veneers.³⁶

Annual and monthly meetings are held, and special meetings may be called by the president or by a majority of the board of directors. At the annual meetings officers are elected for the ensuing year.³⁷ In addition it is customary for the president to review in a general way, and the secretary more in detail, the work accomplished by the association during the year. The monthly meetings have been held by groups in the various regions of production. These group meetings have been held at Cincinnati, Ohio; Memphis, Tennessee; New Orleans, Louisiana; and Little Rock, Arkansas. They have been held at these points as a convenience to the members in attending. In order to have the discussion at these meetings proceed in an orderly and systematic manner, the manager of statistics was in the habit of mailing to each member, a few days in advance of the date of the meeting, a questionnaire containing a request for information bearing on market conditions as related to the hardwood industry.³⁸ In the light of the replies received to the questions, members present at meetings would discuss the various subjects developed by the answers. The minutes disclose that these discussions were free and open. Outsiders, including competitors and buyers, freely participated in them.³⁹ At practically every group meeting manufacturers and other people not members of the Open Competition Plan were present.

If one were to make a summary of the chief points that usually came up for discussion in these meetings, perhaps the following would be representative:

1. The class of customers from which most inquiries and orders were coming. Answers to this question showed what

³⁶*By-Laws*, Art. 2, *Record*, Vol. II, pp. 1300-1301.

³⁷*Constitution*, Art. 6, *Record*, Vol. II, p. 1296.

³⁸Gadd, F. R., *Record*, Vol. II, p. 1101.

³⁹*Ibid.*, p. 1104.

industries, consuming hardwoods, were most active, and served to guide members in determining on what kinds of lumber to accentuate and diminish production.

2. The length of time that it would take members to ship out total orders on hand, working under normal conditions. The answer to this question obviously disclosed the amount of unfilled orders on hand, indicating whether business was good or not.

3. The total production of hardwoods for the past month. These data when compared to normal production showed whether or not there was a tendency to accelerate or slow down production. When considered in relation to the size of stocks on hand and volume of orders, it was possible to discern roughly whether the tendency was in the direction of overproduction or underproduction.

4. The total present stock of hardwoods, sold and unsold. These data when compared to the normal stocks on hand, and taken in relation to the volume of production and orders, were criteria of the probable future trend of prices, and also served to guide members in formulating their production policy.

5. The condition of labor as compared to thirty days ago and the causes for any changes that might have come about. The efficiency and availability of labor, of course, had a direct bearing on the quantity and quality of production.

6. The character of the car supply as compared to thirty days ago. The answer to this question obviously revealed with what dispatch shipments were going forward to customers.

7. The character of collections as compared to thirty days ago. These data revealed the financial conditions prevailing among customers in the consuming industries, and reflected to some extent the general financial condition of the country.

8. The number of mills, if any, expecting to shut down; the length of time they were to remain shut down and the reasons therefor. The answer to this question revealed to a degree the future trend of production.⁴⁰

The reporting plan, as inaugurated by the Hardwood Manufacturers' Association of the United States in 1917, and taken

⁴⁰*Minutes of Meetings, Record*, Vol. I, pp. 104-223; also Gadd, F. R. *Record*, Vol. II, pp. 1101-1103.

over by the American Hardwood Manufacturers' Association in 1919, provided for, first, production reports; second, sales reports; third, shipping reports; fourth, stock reports; fifth, price lists; sixth, inspection reports.⁴¹

Reports of production were to have been made to the secretary, monthly, each wood being classified according to grades and thicknesses, and the secretary was to have sent to each member, once a month, a summary of the production for the previous month, but this feature of the plan had to be abandoned because a sufficient number of mills did not turn in reports to make the information complete enough to be representative.⁴²

The sales report, as originally planned, was retained, with the exception of a few minor changes. Members were required to make a daily report of all sales and cancellations, and these were to be exact copies of orders taken and were to include all agreements. These reports were compiled and issued to members weekly, in printed form. The plan, as it originally stood, involved publishing the names of customers, but this was discontinued as it was found that some of the members objected to publishing the names of their customers. The sales report mailed to members, as finally evolved, showed for each kind of wood and grade the date of sale, by whom sold, the number of feet sold, the thickness, the destination by city or territory, the delivered price made to the customer, its equivalence at a common gateway, such as Cairo or Cincinnati, and the current average of sales at these gateways. The purpose of the gateway price was to put all prices on a common basis for comparison. Comparison of the actual prices received was not possible because of difference in freight rates to different points. "Projection of prices to their gateway equivalent" put all prices on a common basis, thus making them comparable.⁴³

Having members make reports of shipments was a phase of the plan that was never put in operation. It was found impracticable to do so. These reports were to have been made

⁴¹Gadd, F. R., Exh. 12, *Record*, Vol. I, p. 82.

⁴²Gadd, F. R., *Record*, Vol. II, p. 1107.

⁴³See copy of sales report, appendix, Exh. 6.

daily by members, and were to have been exact copies of the invoice. They were to have been summarized by the secretary, much in the same way that reports of sales were summarized, and mailed weekly to members.⁴⁴

Reports of stocks were made monthly to the secretary, showing the amount of stock in each grade, kind, and thickness on hand the first of the month. Three columns were provided. The first two columns showed the total stock on hand both sold and unsold divided into green and dry. The third column showed the total stock of each kind, grade, and thickness sold. The secretary compiled all reports into one report, showing for each grade, kind, and thickness, in separate columns, total dry stocks, total green stocks, stocks sold, stocks oversold, stocks unsold, stocks unsold for the month previous, and the increase or decrease in stocks unsold.⁴⁵

Price lists were to have been filed by each member with the secretary at the beginning of each month, and any changes of prices were to have been filed as soon as made. The secretary was to have sent out each month a summary of these price lists showing the prices asked by each member, and any changes reported by members were to have been immediately transmitted by the secretary to all members. However, this phase of the plan was discontinued because many members did not publish price lists regularly, and the information was not sufficiently complete to be representative.⁴⁶

Inspection reports were submitted to the secretary by inspectors who were employed to check up on the grading of members. This report to the secretary showed the grading of the various mills and also the association inspector's grading on the same shipments. It was relayed by the secretary to all members. The purpose, as expressed by the organizers of this plan, was not to change any member's grading, but to furnish each member with a "basis upon which he can compare his prices with

⁴⁴Gadd, F. R., *Record*, Vol. II, p. 1107.

⁴⁵See copy of stock report, appendix, Exh. 10.

⁴⁶Gadd, F. R., *Record*, Vol. II, p. 1107.

those of other members, thereby making the price reports more intelligible and accurate."⁴⁷

The remaining feature of the plan was a market report letter which was to have been issued monthly by the Committee on Reports and Statistics. The intention was to have the committee give its idea of the market and incorporate a general analysis of market conditions.⁴⁸ However, the work of getting out this market letter was turned over to the secretary. He did not mail out the letters monthly as was provided for by the original plan, but issued them at irregular intervals. They were written on a great many different subjects bearing on matters of business interest, but in the main they were an expression of the secretary's understanding of industrial conditions as related particularly to the hardwood industry.

These letters seem to have been the chief cause of the action of the Government in filing suit against the members of the Association.⁴⁹ The contention of the Government was that they were written with the purpose of inciting members to "boost" prices, and that a conspiracy existed among members to effect this end. The writer, having read them, inclines toward the point of view that these letters did little more than point out the actual conditions of the market. These conditions were such as would inevitably have led to rapidly rising prices, irrespective of any conspiracy that may or may not have existed. The following quotation taken from the report on the lumber industry, made June 1, 1920, by the Forest Service of the United States Department of Agriculture, depicts very succinctly conditions as they prevailed early in 1919, the time that the Government alleges the conspiracy began:

"The termination of the war found the lumber industry with depleted stocks. Production during the war had been much less than normal on account of shortages of labor and equipment and embargoes on transportation. A large part of the lumber produced had been taken by the Government for war purposes. During the same time, the normal construction of

⁴⁷*Report of Open Competition Plan, Record*, Vol. I, p. 86.

⁴⁸*Ibid.*, p. 87.

⁴⁹For an account of the Hardwood case, see chapter 8, pp. 157-160.

dwelling and industrial structures and the use of lumber in many manufacturing industries had been greatly curtailed. Following the war these pent up demands were released. They caught the lumber industry not only with its stocks short and broken from war conditions, but unable on account of labor difficulties, lack of freight cars, and bad weather in important producing regions, to respond rapidly with increased production. Aside from the general causes affecting prices of most commodities, the expansion of credit accompanied by currency inflation and the wave of speculation and extravagance, an 'auction' lumber market would no doubt have resulted from frenzied competition of buyers to obtain the limited stocks available, wholly inadequate to satisfy current demands.

"Under the combined influence of the general conditions making for high prices and this situation in the lumber industry itself, prices rose to unprecedented limits. In March, 1920, average mill prices in the South and West had increased 300 percent and more, over the prices received in 1914, and average retail prices in the Middle West showed increases ranging from 150 to 200 percent. In the case of the high quality hardwoods and other specialized products, the average advance in eastern wholesale markets was from 200 to 250 percent, and the demand at this advance was still unsatisfied."⁵⁰

This extract is written from the point of view of the whole lumber industry, but the conditions named therein were peculiarly applicable to the hardwood industry. Several hundred pages of testimony were taken in the Hardwood case, gathered not only from members, but from disinterested non-members and buyers, substantiating the point of view that conditions of supply and demand were such as to produce a runaway market. Prices rose so high that members became alarmed lest they should react unfavorably on the hardwood industry by causing purchasers to resort to substitutes. Some of the leading producers attempted for a time to stem the tide of rising prices by refusing to raise their own, but the current was too strong for

⁵⁰Report of the Forest Service of the U. S. Department of Agriculture, *Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber Ownership*, June 1, 1920, p. 34.

them, and seeing that their efforts were of no avail, they resumed the policy of taking the price that market conditions made it possible to secure.⁵¹ Instances are given where buyers offered producers premiums in order to get the stocks they so urgently required. They bid against each other for the available stocks.⁵² If there was a conspiracy to raise prices, it at least did not result in raising the prices secured by members to a higher level than those secured by non-members. A comparison of the prices of members and non-members discloses this fact, as does the testimony of several buyers who purchased from both classes of producers.⁵³ The conspiracy, if there was one, was of an innocuous kind. In the face of the facts here reviewed, it is difficult to understand what incentive there could have been for producers to conspire to raise prices when buyers were willing to take their stocks at any price, almost, that they cared to designate, even at times offering a higher price than producers were quoting.

From the standpoint of avoiding prosecution at the hands of the Government, at least, the action of the secretary of the American Hardwood Manufacturers' Association, in interpreting statistics to members in such a way as to elucidate to them the course of action that their self-interest should lead them to take, seems indiscreet, and is so regarded by the Eddy association secretaries. The latter appear to be careful not to do more than convey information bearing on actual transactions, leaving members free to come to an independent decision regarding their price and production policy. There is no evidence that the secretary attempted to influence members in their price and production policy in any other way than through these market letters. Neither does it appear that this association has been guilty of issuing price lists, with the intent of bringing about

⁵¹Ritter, W. H., Exhibit, *Open Letter to Hardwood Manufacturers and their Patrons*. *Record*, Vol. II, p. 1277.

⁵²*Minutes of Meeting* held at Cincinnati, Ohio, June 10, 1919, *Record*, Vol. I, Exh. No. 388.

⁵³See chart No. 1, Chapter 9; see also Dulweber, B. F., *Record*, Vol. III, p. 1653; Bayer, J., *Record*, Vol. III, p. 1617.

uniformity among members in their price quotations, as have most of the other lumber associations.

The failure of the secretary to obtain all the data from members contemplated in the original plan illustrates how very difficult it is to operate successfully an open price plan where the association membership is large and scattered over a wide area of territory.

PUBLIC AND ECONOMIC ASPECTS OF THE LUMBER INDUSTRY IN THEIR RELATION TO THE OPEN PRICE PLAN

There are certain serious evils attending the production and distribution of lumber which exercise a detrimental effect not only upon the best interests of manufacturers themselves, but also upon those of the public, in their capacity of consumers of lumber. The aim of this section will be to discuss, first, the character of these detrimental influences, and second, such remedies as seem applicable to the situation, giving special emphasis to the rôle that the open price plan can play, perhaps, as a remedial measure.

The chief evils associated with the lumber industry may be traced back to two leading sources. One finds its fountain head in the feverish speculative activity in timber lands that has gone on in the past; the other in the character of the industry itself. Disregarding the forces that have led to this speculative activity, its result has been to build up an excessive burden of timber investment. Excessive timber investments have created a need for meeting current charges thereon. In order to obtain the funds with which to meet these charges investors have been constrained to produce as much lumber for the market as possible, with the result that the lumber industry has been built up beyond its needs.⁵⁴ This close alliance with timber speculation, has made lumber manufacture "the tail of the dog, existing not as a business in itself, conducted on its own merits, but solely as a means of getting rid of timber when speculative

⁵⁴*Some Public and Economic Aspects of the Lumber Industry*, Report No. 114, by the Forest Service of the Department of Agriculture, issued Jan. 24, 1917. Exhibit "A," *Record*, Vol. II, p. 1177.

⁵⁵*Ibid.*, p. 1181.

interests dictated."⁵⁵ Excess mill capacity, taken together with the burden of meeting obligations to pay interest on bond issues and principal on maturing bonds have been a pressure for the steady running of mills which has led to periodic overproduction.

The character of the industry itself, by giving rise, among manufacturers, to a strong spirit of individualism, has had its effect on the production and distribution of lumber. The nature of the industry has been such as to isolate manufacturers from one another. Sawmills have been numerous and have been spread over a wide area of territory because timber is spread out over a wide area, is of great weight and low value and can therefore not be shipped long distances to be manufactured.

The very spirit of self-reliance and independence fostered by the rough, physical conditions characteristic of the lumber industry has been a source of weakness as well as strength. Not being willing to submerge their individuality to the extent of acting together in a common program, manufacturers have looked askance at associated activity intended to better conditions in the industry. Such associations as have come into existence have been sponsored chiefly by the more progressive and intelligent class of producers. They have been very distinctly in the minority. In consequence there has been a lack of common understanding concerning the situation in the industry. This lack of cohesion in the industry has been further accentuated by the fact that the lure of speculation has drawn into the industry men from many walks of life differing widely in experience and point of view. The lack of common understanding concerning the problems confronting the industry, growing out of the failure to coöperate, has no doubt had its influence in bringing about periodic overproduction.⁵⁶

One of the best illustrations of this diversity in point of view is the manner in which the various producers have coped with depressed market conditions. Some operators have met the situation by curtailing their output; others by running double shift in an effort to decrease cost of production.⁵⁷

Some alleviation from the effects of overproduction might have

⁵⁶*Ibid.*, pp. 1179-1182.

⁵⁷*Ibid.*, p. 1182.

been secured if operators only could have known how to widen the market for their product, but, engrossed as they have been in overcoming the difficulties with which the production of lumber has been fraught, they have overlooked the importance of learning to merchandise their product properly.

What has made matters worse is the change that has taken place in the character of consumption. Operators have gone on producing on the assumption that there is a more or less fixed demand for lumber. As a matter of fact the demand for lumber has been changing from year to year. The use of substitutes has been mainly responsible for the more or less regular decline in the consumption of lumber that has been taking place in the past few years.⁵⁸ Ineffective adjustment of output to changes in the volume of consumption is therefore another of the reasons for overproduction.

Periodic overproduction has led to severe price fluctuations.⁵⁹ Occasional years of high earnings have usually been followed by periods of small profits or actual losses. It may be remarked in passing that a small percentage of overproduction is sufficient to cause a material drop in prices because of the inelastic character of the demand for lumber.⁶⁰ Instability of market conditions has been a bane to operator and buyer alike. Many financially weak operators have been forced to liquidate their investments. This weeding out process, altho of value in some instances, in eliminating inefficient producers, may be carried too far; it may lead to monopoly, unless ways and means are found of protecting those who produce efficiently but find themselves the victims of unstable market conditions. In some instances buyers have declared that if the open price plan has the effect of stabilizing prices no objection to its adoption among operators will be raised by them. What the buyer desires above everything else is a stable market. In this connection the secretary of the Ohio Association of Retail Lumber Dealers has written the following: "I am rather of the opinion that this method of stabilizing market conditions will one day be insisted upon as

⁵⁸*Ibid.*, p. 1167.

⁵⁹*Ibid.*, p. 1134.

⁶⁰*American Lumberman*, Oct. 6, 1917.

essential to economical distribution and stable market conditions."⁶¹ When prices fluctuate severely buyers are uneasy lest their competitors shall succeed in buying their requirements at a lower figure than they have been able to do, and in consequence undersell them.

The public also feels the effects of the unstable conditions resulting from periodic overproduction. With a radical decline of prices many financially embarrassed operators feel impelled to lower the cost of production by dumping an increased output on the market. The economic demand is not such as to warrant this increased output; lumber is therefore wasted. Further waste is brought about because of the fact that on a declining market it becomes unprofitable to market the lower grades of lumber, the result being that they remain unutilized. In his argument before the Supreme Court in the *Hardwood* case, Mr. Boyle, attorney for the defendants said, "If you have a declining market in this industry, as all of the members of this court know, it must follow that when you get to the point where production cost is equal to the price paid, only the best part of the log will be brought to the saw, and as a result millions upon countless millions of feet of timber are wasted every year, because they cannot afford to bring it to the mill."⁶² Of course the public has to foot the bill for this waste.

The remedies for the situation that confronts the lumber industry as pointed out in the report of the Forest Service may be summarized as follows: 1. A more adequate supply of capital for the purpose of properly financing operations. 2. Reductions in excess mill capacity. 3. More efficient equipment and technical methods. 4. Better use of raw material. 5. Better merchandising of the product. 6. Sounder methods of accounting. 7. Current publication of prices.⁶³

The work that lumber associations can do in bringing about improvements along the lines indicated above is apparently

⁶¹Torrence, Findley M., Secretary of the Ohio Association of Retail Lumber Dealers, letter dated Dec. 31, 1920.

⁶²Boyle, L. C., Oral Argument before the Supreme Court of the U. S., *American Column & Lumber Co. vs. U. S.*, Oct. 20, 1920.

⁶³Report dated Jan. 24, 1917, Gadd, Exhibit "A," *Record*, *American Column & Lumber Co. vs. U. S.*, Vol. II, pp. 1190-1195.

deemed of considerable value, for the report goes on to say: "A number of large trade organizations seeking the last word in the efficiency of each department would undoubtedly benefit the whole industry in extending its markets, exploiting its by-products, and developing standards of efficiency in all branches. And they would unquestionably benefit the public through improved service."⁶⁴ Following this the report proceeds to name and describe the functions which such associations may properly undertake. Among these prominent mention is made of the gathering, compiling, and disseminating of trade statistics: "Current trade statistics necessary to keep lumber manufacturers informed on the condition of the market . . . include data on the volume of orders, shipments, and lumber stocks on hand, the prices which are being paid for various grades, special demands for certain grades or products, the price and supply of competing materials; in a word, the information needed to keep the lumber manufacturer in touch with the market which he supplies."⁶⁵ Then follows a brief in defence of open price work: "This activity of associations does not involve manufacturers' agreements to curtail output or fix prices. Such restraints of competition would be facilitated by the statistical work of associations, but they are totally different things. The function of the association is to give each operator individually the facts which he needs to conduct his business intelligently in relation to the changing conditions of his market. This function is doubly necessary when the market is at a great distance from the mills.

"There is a clear cut line between these services to individual operators through an open price association and activities in restraint of trade. With adequate safeguards the public should encourage such forms of coöperation among manufacturers as a necessary means of making the lumber industry more efficient. The activities of trade associations should be safeguarded (1) by the coöperation and control of a responsible public agency like the Federal Trade Commission, and (2) by systematic publicity."⁶⁶

⁶⁴*Ibid.*, p. 1195.

⁶⁵*Ibid.*, pp. 1197-1198.

⁶⁶*Ibid.*, p. 1198.

In a later report on the lumber industry the Forest Service of the Department of Agriculture makes a rather positive statement regarding the stabilizing influence on prices of the exchange of price information, and its consequent benefit to seller and buyer alike: "Solely as a matter of information, the current distribution of prices received by different members of the association tends to unify the rates at which lumber is offered for sale and to make increases or decreases in accordance with the fluctuation in the market more nearly similar at all producing plants. The same information would doubtless be of equal value to buyers of lumber, particularly to the small buyers less able to keep posted upon market fluctuations, if available to them."⁶⁷

No doubt the public would profit immensely if remedies could be invoked which would prevent the tremendous waste of timber that occurs when, through overproduction, prices decline so radically as to make it unprofitable for operators to attempt to market the lower grades of lumber. The exchange of information among producers, is, as the report of the Forest Service makes clear, not the sole remedy, but it certainly has a very important part to play in eliminating unsatisfactory conditions. This is particularly true because it has been found next to impossible to arrive at the cost of producing individual items of lumber. In the logging operations, "it is almost impossible to allocate the cost to the various species, altho there is known to be a difference in the cost of handling them, by reason of difference in the size of the logs, the relative positions in which the various species grow in the forest, etc. Even if such difference could be ascertained so that the logging cost would be allocated properly to each species, or even to each log, the continuity of this allocation could not be maintained, because various grades and sizes of lumber are produced from each log."⁶⁸ Therefore in establishing a selling price for each grade the producer has no cost basis to guide him. It costs no more to

⁶⁷Report by the Forest Service, U. S. Department of Agriculture, *Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber Ownership*, issued June 1, 1920, p. 68.

⁶⁸Stark, M. W., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1246.

produce the better grades than it does the poorer, but a considerable proportion of the latter will not bring a price that will cover the cost of production. In order to secure a profit a good enough price must be obtained for the better grades to insure that the average price received on all varieties of grades and kinds is higher than the average cost of production.⁶⁹ It is clear from these statements that in establishing a selling price for each grade the producer has a very inadequate cost basis to guide him. Finding that he cannot use costs as a proper basis for determining selling price, he is at sea regarding a solution, unless he can obtain information of a kind that will give him an idea of the trend of the market. Hence he finds that a knowledge of conditions, such as is afforded him by membership in an open price association is a most valuable asset in formulating a selling policy.

No doubt a widespread knowledge among producers of the vital market and trade statistics would go a long way toward eliminating the conditions which are responsible for the maladjustment of demand and supply, and which leave a heritage of economic waste that must be borne by the public. Being well informed, producers probably would find it to their interest to direct their production in such a way as to bring about a more normal adjustment of supply to demand. If, for instance, they should find that the stocks of a certain item are low, and orders seem to be well sustained, they would undoubtedly accentuate production of that item in the hope of getting the benefit of higher prices that might be expected to result from the low condition of stocks. On the other hand, if orders for an item should show signs of declining, while stocks seemed to be well supplied, and in reflection of these conditions, prices should show signs of sagging, no doubt the well informed producers would cut down production of the item affected. In the one case, where production is stimulated, a stringency of supply, accompanied by an abnormally high price, is prevented. In the other case, where production is diminished, an oversupply, accompanied by an abnormally low price, is prevented. In other words, supply comes to be adjusted to demand at more or less normal price levels. As

⁶⁹*Ibid.*, p. 1247.

a consequence the sudden dips of prices that have so often made it unprofitable to attempt to market any but the best grades of lumber tend to be eradicated. With prices confined to normal levels, the prospects for profitably marketing the poorer grades are greatly enhanced. On the assumption that this is the result, the public profits thereby through the conservation of its timber resources.

CHAPTER VIII

REGULATORY ASPECTS OF OPEN PRICE ACTIVITY

The aim in this chapter is not to pass an opinion upon the legality of the open price plan, but, first, to call attention to such court cases as attorneys consider have a bearing on the plan; second, to review such opinions relative to the plan as may have been expressed by prominent members of the legal fraternity; third, to briefly recount activities engaged in by so-called open price associations that may be considered in contravention of law and suggested remedies for these abuses; fourth, to interpret the attitude assumed by various departments of the Federal Government toward the plan.

Members of the open price associations are in a quandary as to their standing before the law. The question at issue is whether the activities of these associations are in violation of State and Federal anti-trust laws. Perhaps the fundamental proposition involved reduces itself to this question: are members within their lawful rights in associating for the purpose of furnishing each other with accurate information of conditions in the industry in which they are engaged, including stocks on hand, rate of production, and prices at which the product has been sold, and does such association cease to be lawful because, being informed by the knowledge so obtained, but without agreement of any kind, the individual members may ask different prices or produce in different quantities, than they would have done had they not been so informed?

For the first time an opportunity has been afforded the Supreme Court of the United States of determining the legality of the open price plan. The defendants involved are the members of the American Hardwood Manufacturers' Association. They made an appeal from the final decree of the District Court in the Western District of Tennessee, Western Division, in a proceeding

brought by the United States under the Sherman Anti-Trust Act, to enjoin them from continuing an alleged combination to enhance the price of hardwood lumber. There were 329 corporations, firms, and individuals involved. All were members of the "Open Competition Plan" of the association. The alleged conspiracy to enhance prices began in January, 1919, and continued to the date of the filing of the bill of complaint in February, 1920.

The alleged means of accomplishing this conspiracy may be briefly described as follows:

1. Compiling and distributing monthly stock reports and production reports.

2. Printing and distributing monthly bulletins which called attention to a shortage of hardwood lumber and admonished members to exact higher prices, but not to meet the shortage by increasing production.

3. Compiling and distributing weekly sales reports.

4. Printing and distributing a bulletin containing excerpts from commendatory letters which the secretary received from members, and which were alleged to have been explanations by members of the manner in which the reports of sales were used in enhancing future prices.

5. Discussing prices at monthly group meetings "so as to produce mutual approval for high prices received, and mutual oral predictions that high prices would continue."

6. Compiling and distributing monthly replies to questionnaires "constituting an exchange of written predictions by the defendants that prices would continue high."¹

The main attack of the Government was directed at the market letters which the Manager of Statistics issued to members at irregular intervals. The defendants in their answer admitted that they were exchanging information of the kind described in the bill of complaint but denied that this activity was carried on as a means of accomplishing by collusion the enhancement of prices or the curtailment of production.

The judge in the case decided that there was "a common note running through all the evidence," namely "increase in prices,"

¹*Brief for the United States, American Column & Lumber Co., et al. vs. U. S.*, pp. 2, 3.

and therefore granted an injunction which permanently forbade defendants to participate in any open price activity.

On appeal, the case went direct to the Supreme Court. Hearings were held on October 20, 1920. Apparently the Court has not been satisfied with the evidence then presented because there is to be a rehearing on April 11th, 1921. Business men who are interested in the open price plan hope that the Court will give the question of legality of the open price plan a broad and comprehensive treatment and that some fixed general rules of a constructive nature will be laid down which will make clear to what extent coöperation may be legitimately carried on.

To enter into the merits, pro and con, of the Hardwood case from a legal point of view would lead the writer into a ramification of legal discussion such as he, as a layman, does not feel competent to undertake.² At all events it is thought that such a discussion would lead away from the real point at issue, namely the legality of the open price plan taken in the abstract. The reason for this point of view is that the charges made by the Government against members of the American Hardwood Manufacturers' Association may be regarded as being directed, not against the plan as conceived by Mr. Eddy, but against an abuse of the plan. Statements were made in meetings and bulletins which the Government alleges were evidence of a conspiracy to suppress competition. These statements were not necessary accompaniments of the open price plan. In fact, it is thought that an open price association under the guidance of Mr. Eddy or his associates would never have allowed loose statements of the kind made by the Manager of Statistics and members of the Hardwood association to gain currency. The Government took occasion to condemn the open price plan because it seemed to be the instrument by which the alleged conspiracy was consummated. If it was so used it constituted an abuse of the plan. Even if the court did establish that the plan was so abused, that fact could not be regarded in the light of a demonstration that the plan when not so abused would be illegal.³

²In ch. 7 is a short discussion to the effect that the rise in price of hardwood lumber can be explained by attributing it to natural causes. See pp. 145-148.

³Felix H. Levy, a prominent attorney of New York City, states in a letter to the

The writer, however, does feel justified in recording an objection to the method employed by the Government in presenting its evidence in the Hardwood case. Isolated excerpts from letters or minutes of meetings were cited or quoted, and then strung together so as to fit in with the theory of the Government. As a result, in reading the evidence, one gets an entirely different conception of its character than he would if the phrases were read in connection with their context. In many instances the evidence so presented is grossly distorted or misleading—as one will discern by reading the letters or minutes of the meetings themselves.

DECISIONS APPLICABLE TO THE OPEN PRICE SYSTEM

Barring the opinion handed down by the Missouri Supreme Court in the Yellow Pine case,⁴ such case law as seems to touch on the legality of open price work is limited to opinions rendered in the lower Federal courts. In the Hardwood case Judge McCall, who handed down the decision, did not state under what circumstances, if any, open price work would be considered legal. He confined his remarks to a condemnation of the criminal acts alleged to have been committed, these being of a character that may properly be designated as an abuse of the open price plan.⁵

The opinion most often cited by proponents of the open price plan as indicating specific approval of this character of activity was given by Judges Buffington, Hunt, McPherson, and Wooley in the famous Steel case. In commenting on the Gary Dinners they quoted with approval the Government's concession in the original petition: "It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or a combination in restraint of trade," and added, "when the business is manufacturing, of course all

writer, "You will find that the matters complained against by the Government went far beyond the usual procedure commonly described as 'open competition'. Therefore the decision of the Court in overruling the demurrer cannot be deemed to mean a specific finding of illegality against the 'open competition' principle."

⁴For an extended account of this case see ch. 7, pp. 132-137.

⁵See opinion of Judge McCall, Dist. Court of U. S. Western District of Tenn. Western Division, in equity No. 751; U. S. vs. American Column & Lumber Co. et al., p. 61.

this has a direct bearing on the subject of prices, and these conferences may therefore consider that subject specifically.”⁶ However, the judges went further than this, and made it clear that it would be permissible for individuals who were really acting for themselves to make announcement of future prices but implied that what may be granted to an individual may be denied an association of individuals. The language used was as follows: “And if each individual should choose to announce at such a meeting the specific price he intends to charge for his wares, we are aware of no law that forbids him so to do. But at this point we approach debatable ground, for an individual is permitted to do some things that are denied to an association of individuals.⁷ In concluding this phase of the opinion, it was stated that a decision as to the legality of this procedure would depend upon the fact as to whether the action in announcing future prices “was really taken by each individual acting for himself, or whether those present were in fact pursuing a common object.”⁸

Attorneys associated with open price associations have construed this opinion to mean that there exists an implied distinction between past and future prices. Mr. Eddy constructed the open price plan on the theory that, altho a discussion and declaration of intent as to future prices in all probability would result in an agreement as to future prices, no such danger would be confronted if discussions and declarations were confined to past prices. However, it may be interpolated that this line of distinction might become exceedingly fine. As the Manager of Statistics of the American Hardwood Manufacturers' Association once remarked, “If you know what your competitor has done up to last week or last night, you are pretty close to knowing what he will do tomorrow and you can act accordingly, with intelligence and wisdom.”⁹

⁶U. S. vs. U. S. Steel Corporation, 223 Fed. Rep., 154-155; also Todd, G. C., Argument before the Supreme Court, Oct. 20 1920, American Column & Lumber Co. vs. United States.

⁷*Ibid.*, p. 155.

⁸*Ibid.*, p. 155.

⁹*Annual Report of the Manager of Statistics*, Dec. 1919, *American Lumberman*, Dec. 20, 1919.

In the Chicago Board of Trade Case¹⁰ the court stated: "It is an unhealthy condition of affairs where men are compelled to buy and sell without adequate knowledge of actual market conditions." In this case it was decided that a rule adopted by the Chicago Board of Trade fixing the price at which members should buy grain from country dealers and farmers between the closing of the exchange on one day and the opening on the next did not have the effect of suppressing or destroying competition, but only to reasonably regulate it. One of the grounds for sustaining this rule was that it purposed to correct evils that had resulted from ignorance of market conditions.¹¹ This decree is often cited by attorneys representing open price associations in support of their assertion that even tho it be true that open price work has a regulatory effect on competition, the illegality of such activity is therefore not established, because as was stated in the Steel case, the Sherman Act "'does not compel competition, nor require all that is possible.'"¹² Attorneys for open price associations contend that the only manner in which open price work "regulates" competition is in the sense of enabling members to determine their price and production policy in the light of accurate knowledge of conditions in the industry.

In the case of the United States vs. Reading Company it was disclosed that there had been an exchange of information among carriers and producers of anthracite coal under the auspices of "The Bureau of Anthracite Coal Statistics." To this bureau members reported monthly their tonnage, their sales at New York Harbor and Brooklyn and prices charged. From these data the secretary of the bureau made up a composite report showing the tonnages, sales at New York Harbor and Brooklyn, and the prices of each member. The report was sent to members of the plan. The court held that this arrangement was not in violation of law.¹³

¹⁰246 U. S., 231.

¹¹Board of Trade of Chicago vs. U. S., 246 U. S., 231, quoted in *Brief*, American Column & Lumber Co. vs. U. S., p. 52.

¹²U. S. vs. U. S. Steel Corporation, 223 Fed. Rep., quoted in argument of Todd, G. C., before Supreme Court, Oct. 20, 1920, American Column & Lumber Co. vs. U. S.

¹³U. S. vs. Reading Company, 183 Fed. Rep., quoted in *Argument of Todd*,

In the case of the *United States vs. Aileen Coal Co. et al*, it was charged that members had combined to enhance the price of coal by agreement. One item of evidence related to the exchange of information among members regarding their sales and prices. In giving his instructions to the jury, Judge Grubb said in part as follows:

"It is the right of every man in business involving the sale of his product to seek to acquire as full information as to the conditions in the market in which he is selling his product as he can, and it is also entirely within the right of persons in the trade to share that information openly among themselves. Nor does the mere fact that they accompanied this interchange of information with statements as to what each expects to try to obtain for his product in itself constitute such action a combination within the meaning of this Act."¹⁴

In the case of the *State vs. Arkansas Lumber Co.*, the court held: "If in the instant case there had been touching this price current matter no antecedent unlawful acts of the Yellow Pine Association, if this association had not for years promulgated as current prices lists which falsely represented and arbitrarily fixed the prices of yellow pine lumber pursuant to the adopted report of a committee on values, and if Smith, the secretary of the association, pursuing the lawful methods originated by him of obtaining reports from correspondents of actual sales, had fairly compiled and averaged such reports into a list of current prices of yellow pine lumber, we would not say that Smith's acts or the acts of the association in his behalf were unlawful."¹⁵

In the case of the *United States vs. the Eastern States Retail Lumber Dealers' Association*, the principle was laid down that when information is exchanged for the obvious purpose of suppressing competition or raising prices, it becomes illegal to distribute such information. The defendants who were retail lumber dealers compiled and distributed among themselves from

G. C., before Supreme Court, Oct. 20, 1920, *American Column & Lumber Co. vs. U. S.*

¹⁴*U. S. vs. Aileen Coal Co. et al.*, U. S. District Court, Southern District of N. Y., *Brief for Appellants*, *American Column & Lumber Co. vs. U. S.*, p. 64.

¹⁵*State vs. Arkansas Lumber Co.*, 169 S. W., 177.

time to time lists of manufacturers of lumber and wholesale dealers who sold directly to consumers. The object in doing so was "to cause retailers receiving these reports to withhold their patronage from listed concerns." The court held that this object, namely to boycott those who sold direct to consumers, was illegal, and members were enjoined from continuing to distribute this class of information.¹⁶ A similar decision was handed down in a case involving members of the Northwestern Lumbermen's Association, i. e. *United States vs. Hollis et al*, where the purpose also was to prevent manufacturers and wholesalers from selling direct to consumers.¹⁷

The cases here reviewed were brought into evidence by the defence in the *Hardwood* case in an attempt to prove the validity of the furnishing of information through the medium of an open price association when the object is merely to keep members posted on market conditions, no purpose of using such information to restrain trade being in contemplation. The Government cited no decisions involving the question as to the validity of exchanging information through the medium of a trade association. The cases cited may therefore probably be considered representative of the drift of court opinion. The legality of the practise has apparently been sustained in every case. These decisions may, of course, be disregarded in the opinion which it is expected the Supreme Court will hand down in the near future.

EXPOSITIONS OF THE LAW RELATING TO THE OPEN PRICE PLAN

Turning to a consideration of the point of view of attorneys, a considerable number hold that the collection and distribution of business statistics through the medium of an open price association, when properly conducted, is legal beyond doubt. Mr. Arthur Jerome Eddy, the "father" of the open price plan, was to the time of his death¹⁸ the most conspicuous defender of

¹⁶*Eastern States Retail Lumber Dealers Association vs. U. S.*, 234 U. S. 600, quoted in *Brief for Appellants*, *American Column & Lumber Co. vs. U. S.*, p. 71.

¹⁷246 Fed., Rep., 611, quoted in *Brief for Appellants*, *American Column & Lumber Co. vs. U. S.*, p. 71.

¹⁸Mr. Eddy died in July, 1920.

the plan. Others are Judge Dickinson, who was prosecutor for the Government in the Steel case; Mr. Elmer H. Adams, of Adams, Childs, Bobb & Westcott, Chicago; Mr. B. K. McCloskey, of Kinnear, McCloskey and Best, Pittsburgh; Mr. Henry A. Wise, late United States District Attorney, New York City; Mr. Rush C. Butler, of Butler, Lamb, Foster and Pote, Chicago; Mr. Wm. J. Mathews, of Wetton, Mathews & Pegler, Chicago; Mr. James L. Bruff, New York City; Mr. Clark McKercher, former assistant to the United States Attorney General, of McKercher & Link, New York City; and W. F. Lehmann, of Lehmann and Lehmann, St. Louis.

What is considered the most famous exposition of the law relating to open price activity is that which Mr. W. F. Lehmann gave to the secretary of the Yellow Pine Manufacturers' Association, in a letter dated April 8, 1909. Mr. Joseph E. Davis, Commissioner of Corporations, regarded this exposition of sufficient worth to incorporate in the volume devoted to "Trust Laws and Unfair Competition" which came out as a publication of the Bureau of Corporations of the Department of Commerce, March 15, 1915. The Commissioner describes Mr. Lehmann as "an eminent member of the American bar."¹⁹ As far as the writer's observation goes, expositions of the law contributed by other attorneys have been essentially a rehash of the arguments presented in this document. Because of its importance, as embodying the interpretation put upon the law by a large number of prominent attorneys who firmly believe in the validity of the open price plan, it is here given in full:

"Mr. George K. Smith,
St. Louis, Missouri.

"Dear Sir: I have given due consideration to the matters we talked about on Tuesday and have found no occasion to change the opinion then expressed.

"You have the undoubted right to collect and distribute the fullest information you can get of what is being done in the lumber field, with all details as to the amount of production from day to day, the stock on hand, prices asked and received, etc.,

¹⁹Davis, Joseph E., *Trust Laws and Unfair Competition*, p. 715.

and every man who receives this information has the right to act upon it as he thinks proper. If he thinks more is being produced than can be sold, he can reduce the amount of his cutting, or cease cutting altogether if he chooses, until conditions improve.

"Beyond this, however, you can not go. There can be no agreement or understanding between two or more lumbermen to limit their production and therefore no course of conduct from which such an agreement could be inferred by a court or a jury.

"If some man should go from one lumberman to another getting from each a statement or a promise that he would limit his output in the future and what each man thus said was communicated to the others, and if this were followed by a limitation of the output, a court or a jury would be very likely to infer, despite all protestations to the contrary, that the limitation of output was the result of an agreement or understanding.

"So, too, if one lumberman after another declares that he will hereafter curtail his production and they inform each other of this purpose and then act in accordance with their declarations, a court or a jury would be very likely to infer that this was all in pursuance of an agreement or understanding.

"What is in fact being done, each and all have a right to know. This is no more than is done every day by the market reports in our newspapers. They show, for example, the daily receipts of grain and livestock, the prices received, information as to the visible supply, etc., and farmers individually govern themselves accordingly. The man not pressed for money does not ship his grain or livestock to a glutted market. The lumberman may undoubtedly get like information as to his business and may determine his conduct by it.

"But the action based upon this information must be individual and independent. If he concludes for himself that the market is overloaded and that he cannot produce at a profit, he may curtail or cease producing altogether and for as long a time as he pleases, but if he concludes that he will continue as he is doing, unless his competitors will also curtail or cease production, and there is a curtailment or a cessation as a result

of any sort of a preconcert, agreement or understanding, the law is violated.

"The conditions of the trade, however bad; the price of lumber, however low; the persistence of lumbermen in cutting an amount above the market demands will not legalize an agreement among any number of them to limit the output of their commodity or to fix the price of it. The policy of the law is free competition and it plainly requires that each producer shall conduct his business independently of any compact with his competitors. This does not prohibit any producer from taking into account all the conditions of business in determining his own conduct, and it does not forbid coöperation for the purpose of obtaining information that is useful to each and all.

"I repeat, however, that beyond the collection and distribution of information as to what is being done, you cannot go, and can not state too strongly that any agreement or understanding, no matter how indirect the means by which it is brought about, falls under the ban of the law.²⁰

"Respectfully yours,

F. W. LEHMANN."

Some attorneys apparently believe that the operation of the open price plan must inevitably lead to a violation of the law because the plan provides exceptional facilities for the accomplishment of illegal acts,²¹ but, as far as the writer's observation goes, few, if any, take the ground that the open price plan, considered in the abstract, is in and of itself illegal.

The practise of members exchanging price lists through the medium of a secretary, regarded in many quarters as an integral part of the open price plan, and engaged in by fully as many associations as pursue the other method of reporting only actual transactions, has, however, met with disapproval. Mr. Eddy, the "father" of the open price plan, is among those who declare the interchange of price lists to be illegal. During the Babson

²⁰Davis, Joseph E., *Trust Laws and Unfair Competition*, p. 715.

²¹Mr. Samuel Untermeyer, an attorney of repute practising in New York City, holds this point of view. See Hearings before the New York Joint Legislative Committee on Housing, *Record*, pp. 4598-4666.

conference on Coöperative Competition held in October, 1914, various open price plans then in operation were discussed and a final composite opinion of a plan which would cover many lines of business was drawn up. Section three of the plan provided that "Each member shall, without previous consultation or agreement upon the subject with any other member, make up a price list of net prices or discounts as each class of goods may require, which shall be the lowest prices at which he cares to sell, and forward such list to the secretary before a date to be specified by vote of the Association."²² Mr. Eddy criticized this provision as follows: "In my opinion the law does not permit the filing of price lists as provided in this paragraph, and plans along these lines have been severely criticized. I know of no authority which permits members of an association to file a list of prices, either lowest or highest, 'at which he cares to sell!'"²³ Upon the receipt of these lists the plan provided that the secretary should make up a composite list, stating thereon "the lowest comparative prices found on any of the individual lists submitted to him," and immediately send a copy of this list of lowest prices to each member of the Association.²⁴ Mr. Eddy criticized this provision as follows: "The precise duty of the secretary is not clearly outlined in this paragraph, but, as worded, the paragraph is clearly open to the objection that it permits the issuance of a more or less arbitrary list for the guidance of the trade; and if so, such practise has been specifically condemned by the courts."²⁵

Mr. Felix H. Levy, former Special United States Government Attorney, now practising in New York City, in a speech before the National Pipe and Supplies Association, held at New York City, April 22, 1914, gave it as his opinion that the interchange of price lists was in violation of the Sherman Act. In developing his line of argument he cited an instance where a certain association of manufacturers of machinery devised a plan for interchanging price lists through the medium of their secretary, the purpose being, that "if a buyer came and said so and so is

²²*Babson's Reports on Coöperation*, C. C-10.

²³*Ibid.*

²⁴*Ibid.*

²⁵*Ibid.*

quoting a certain price, the manufacturer could look it up and tell whether or not it was true."²⁶ The existence of this practise—so the argument runs—implied that members had faith in the veracity of the reports of prices contained in these price lists. The mere fact of the presence of these prices in the price lists constituted no proof in itself of their authenticity, unless members were in some kind of agreement to abide by them. In other words there was present an element constituting a promise, express or tacit, to the effect that members would "stick" to the prices named in their price lists. This, according to the exposition of Mr. Levy, constituted an agreement in violation of the Sherman Anti-trust Law.²⁷

Even the most staunch supporters of open price associations among attorneys are frank to admit that members of open price associations are strongly tempted by the facilities afforded them through the operation of the open price system to commit acts condemned by law. Some attorneys regard the open price plan as nothing more than a subterfuge for effecting agreements to enhance prices. The following record of questions and answers taken in the Hearing before the New York Legislative Committee on Housing is illustrative of the points, first, that staunch defenders of the plan admit that it really lends itself to abuse; second, that the plan is regarded as a cloak for the perpetration of illegal practises. Mr. Samuel Untermeyer is conducting the examination. Mr. Wm. J. Mathews, a former associate with Mr. Eddy in the practise of law, and now counsel for several open price associations organized by Mr. Eddy is on the witness stand:

Q. "Do you subscribe to this:" reading from Mr. Eddy's book, *New Competition*, page 109: "'It is almost needless to point out'—referring to these associations of the character that you represent—'that the danger ahead of such frank and friendly coöperation is—as the law now stands in this country—the agreement that suppresses competition.'"

"Given an association in any trade or industry based upon the single agreement to exchange information, there would be the temptation for groups of members to agree upon their bids, to

²⁶*Domestic Engineering*, Vol. LXVII, May 9, 1914, p. 203.

²⁷*Ibid.*, p. 203.

apportion work and so secure for the time being arbitrarily high profits, by suppressing competition.' You agree to that, don't you?" A. "Yes, the effect of that is . . ." ²⁸

Q. "That that is the temptation of these associations?"

A. "That the temptation would thereby be afforded. * * *

Q. Reading: "It is almost as common to hear men say, 'We have an association, but we don't agree upon prices.'

" 'What do you do?'"

" 'Why, I get up and say, 'My price is so and so,' and the others get up and say their prices are so and so.'

" 'And the result is, the price of everybody is 'so and so.'

" 'Naturally, but we don't agree they shall be, we just exchange views and let prices take care of themselves.'"

"Do you remember that?" A. "Yes."

Q. "Do you agree that that can be done, that the law is going to be whipped around the stump that way?" A. "No, Mr. Untermeyer. . . ."

Q. "Do you agree to that?" A. "To the effect that they made statements as to what their prices had been. Beyond that I do not agree that they can state what their prices will be. If that means that they can state what their prices shall be I don't agree with that."

Q. "You are skating on pretty thin ice, aren't you, on that proposition?" A. "Sure, it is a very thin line."

Q. "Pretty fine line, so fine it disappears when you look at it?" A. "No, it doesn't."

Q. "Of course you know that business men do not travel across the continent in order to tell one another what their prices have been; don't you know that? Because competitors are supposed to know what their prices have been?" A. "They don't know it and that's one of the purposes of this society."

Q. "You think that competitors in these great industries with their swarms of salespeople out, one man doesn't know what the other man's prices are?" A. "Sure; they find it out very quickly."

Q. "So they don't get together to suggest what their prices

²⁸Mathews, Wm. J., *Record*, Hearings before the New York Joint Legislative Committee on Housing, p. 4629.

are or have been—they get together to suggest what their prices should be?” A. “They don’t do that in any of our societies. * * *²⁹”

Q. “The principle of the Eddy Plan is coöperation, isn’t it?”

A. “Yes, but not to eliminate competition.”

Q. “You are of the opinion, are you, that there can be coöperation, combination and still competition, are you?” A. “Yes, sir.”

Q. “It doesn’t strike you that those are absolutely contradictory terms, does it?” A. “It does not. * * *³⁰”

Q. “Don’t you know that coöperation between competitors is unsafe to the public unless it is guarded by governmental supervision and regulation, so that the public shall not be taken advantage of; don’t you agree to that?” A. “I can see that it can be abused.”

Q. “Now, then, we have at present no governmental regulations over competition, have we, that is opposed to the principle of the present economic system?” A. “Yes.”

Q. “Now, in the absence of government regulation of agreements between competitors, don’t you see the peril of such agreements to the public safety?” A. “Oh, sure.”

Q. “Therefore, until we get government regulation, don’t you see that coöperation among competitors must be suppressed for the safety of the public?” A. “No.”³⁰

Mr. Gilbert H. Montague, of the New York Bar, and counsel for defendants in numerous prosecutions under anti-trust laws also has emphasized the danger of open price work leading to violations of the law. Speaking of open price associations he is quoted as saying: “So long as its members enter into no agreement to fix prices or control competition, some say the legality of such an association can hardly be questioned. Probably this is so, but the question will remain, how far removed from fixing prices and controlling competition are the results of such an association? It is a hair line that divides many trade associations from admittedly unlawful combinations in restraint of trade, and during the past five or six years [this statement was made in

²⁹*Ibid.*, p. 4624.

³⁰*Ibid.*, p. 4629.

1920] there has been an increasing laxity on the part of many trade association officials and some of the lawyers who have been advising regarding the proper limits of trade association activities. Interchange of information, while always dangerous wherever prices are touched upon, would seem to be no impossible feat for trade associations lawfully to accomplish provided always that they observe proper safeguards and precautions."³¹

The Forest Service of the Department of Agriculture, in its recent report on the lumber industry, concludes that the open price system is susceptible of abuse at the hands of those who would divert its activities into improper channels, but apparently there is no thought that open price activity must inevitably lead to violations of the law, for, altho "the assembling and distribution of prices received by different members of these associations obviously forms a possible vehicle or medium for reaching more or less definite agreements or understandings controlling the prices at which lumber is offered, the extent to which they may serve as such a medium depends upon the policy followed by the particular association as to the degree of publicity given to data of this character, upon the efforts which the association may make to induce its members to price their product in conformity with the highest rates shown by the current reports, and upon the extent to which the individual lumber producers or selling organizations may use the data as a basis for price-control agreements or informal understandings. Properly employed, particularly with a large degree of publicity, such information should serve to stabilize the lumber market to the advantage of both producer and consumer."³²

In the face of the statements made by the staunchest supporters of the open price plan, tantamount to an admission that the interests of the public may all too easily be jeopardized by the unrestrained operation of such a system, it appears that unless open price associations are to be forbidden their existence,

³¹*Printers Ink*, June 24, 1920, p. 44.

³²*Report of the Forest Service of the U. S. Department of Agriculture on Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber Ownership*, June 1, 1920, p. 68.

some means of regulation or control must be sought, looking toward the end of confining the activities of these associations to their proper channels. Before considering the remedial measures that have been proposed, it may be well to give particular notice to some of the more common methods employed by so-called open price associations in their endeavor to maintain or enhance prices unlawfully.

ILLEGAL ACTIVITIES AND SUGGESTED REMEDIES

In the attempt to maintain or enhance prices by means of concerted action, reports pertaining particularly to production, shipments, stocks, costs, and prices play an important part, for they serve to illuminate the competitive situation in such a way as to make clear the course of action that should be adopted in order to accomplish the object in view. If it is thought desirable to seek to achieve the end in view indirectly by curtailing production, a particular study is made of production, order, and stock reports. After learning the conditions of supply and demand therefrom, it becomes possible to determine approximately the percentage of curtailment that is necessary to net members the maximum profit. In the case of the Yellow Pine Association reports of this character were made the basis for determining the percentage of curtailment. Action to curtail was decided upon by resolution. Not only were the reports used for the purpose of determining the percentage of curtailment but the secretary used them after the resolution to curtail had been passed to determine whether members were complying or not.³³

The use of cost information as a basis for enhancing prices in concert is often resorted to because the circuitous method involved in this procedure is helpful in camouflaging from the gaze of the public the true character of the activity engaged in. Incrimination is therefore less likely to result than if some more direct means were used. In its report on the *Causes of High Prices of Farm Implements*, May 4, 1920, the Federal Trade Commission exposed the practise in vogue among the associations of implement manufacturers of perverting the study of costs to the end of controlling prices. In effect what was done was to

³³State vs. Arkansas Lumber Co., et al., 169 S. W., p. 160.

have cost comparison meetings at which inflated costs were compared with the tacit understanding that prices would be advanced the same percentage shown by the inflated costs. The standardization of implements, and the equipment that was furnished therewith, was pushed with energy because by means of this achievement not only prices but also costs could be made comparable. With some degree of standardization accomplished, cost committees could proceed to arrange a cost schedule, assigning arbitrary inflated costs to each kind of implement and equipment, these having no necessary relation to actual costs, but serving as a basis for "recommendations" to members that the percentage of increase in costs would justify a like advance in prices. There appeared to be no direct price agreements; no doubt it was appreciated that there lay less risk of detection in controlling prices through cost education. As the report of the Federal Trade Commission states, the "connection between cost study and prices of members was one of subtle group suggestion and unity of group opinion created at meetings rather than one of direct price agreement or other formal action taken to influence prices of members."³⁴ Reports of prices submitted by members were used to check up their activities to see whether they were following the course indicated by cost study. It is apparent that the cost work done by these associations was not for the legitimate purpose of educating members in proper methods of cost keeping so as to make it possible for them to ascertain their actual costs, but the purpose clearly was to encourage members to advance prices by disseminating among them studies of inflated costs.³⁵

There remain to be discussed the various legal abuses attending the exchange of price information. The exchange of price information may take the form of correspondence and conversations indicating prices to be charged or it may be confined to past prices. Most so-called open price associations have been

³⁴*Report of the Federal Trade Commission on the Causes of High Prices of Farm Implements*, May 4, 1920, p. 427.

³⁵Accounts of the cost activities of the farm implement manufacturers' association may be found on pages 308, 309, 318, 414, 459, 460, 526, 584-587, in the *Report of the Federal Trade Commission on the Causes of High Prices of Farm Implements*, May 4, 1920.

rather circumspect about exchanging information of future prices, because it has been generally believed the courts would look upon activity of this character as almost *prima facie* evidence of an agreement to enhance or fix prices. However, manufacturers of implements have been exchanging such information among themselves, but they have been careful not to involve their associations as such, in this activity. The following letter of F. G. Allen, General Manager of the Moline Plow Works, to W. B. Brinton, President of the Grand Detour Plow Co., September 17, 1915, is illustrative of their methods:

"It has been our intention since the Bloomington Tractor demonstration to raise the price of our tractor plow. We made a price on our plow which seemed to us to net a legitimate profit, and find that we are below the other people who are making this class of goods, and are disposed to get all we can for our goods, even tho the price we are making nets us an adequate profit. * * * * * We could not see how they could have the courage to demand so large a profit, but we assure you that it is our intention of raising prices just as soon as we can get to it, and that we think will be within a few days."³⁶

Prostitution of the system of reporting past prices to the end of maintaining or enhancing prices is most commonly achieved, first, by members, in their individual capacity or through their association leaders, urging each other to strive toward the accomplishment of these objects; second, by the acts of association officers in disseminating data with the purpose of influencing members to direct their energies toward this result.

If dissemination of price data is decided upon, the central office may choose the method of withholding some of the price information received from members, disseminating only that which will seem to indicate that going prices are higher than they really are, or the method may be adopted of issuing to the membership, "suggested" lists of prices purporting to reflect the character of going prices, but in reality being "boosting" prices. Most of the lumber associations have resorted to both methods. In the case of the Yellow Pine Association, the secretary assembled reports of all prices charged by members, but he compiled

³⁶*Ibid.*, p. 343.

and disseminated only those which reflected the highest prices secured. This was characterized by the court as a price boosting device.³⁷ The American Hardwood Manufacturers' Association also adopted the same scheme but very soon abandoned it on the advice of counsel.³⁸ Mr. L. C. Boyle, attorney for this association, upon being questioned regarding the legality of the practise, replied in part:

"It is my judgment that it is unwise, especially at this time, to circularize this form of market report of high sales and this because the conclusion is liable to be reached that the high peaks are designedly given for the purpose of forcing up the general market."³⁹

It has been suggested earlier in this chapter that in some quarters it is considered illegal to interchange lists of prices actually being quoted by members; however this may be, the illegality of distributing "suggested" price lists is unquestioned. This device has been very commonly used in the lumber industry in an effort to maintain or enhance prices. A description of this practise has been given elsewhere.⁴⁰

By the interchange of information pertaining to past prices officers and members alike may learn to what extent fellow-members are adhering to such arrangements, understandings, or agreements as may be in force. Being possessed of this knowledge, they can use it as a basis for bringing pressure to bear on those who seem to be out of line with the general policy of the association. It is no longer customary to exact hard and fast agreements calling for penalties in the event of violations thereof; exhortations, recommendations and resolutions have taken their place. Little trace of compulsion exists. Unity of opinion developed at meetings and by means of correspondence is relied upon to carry out recommendations made and resolutions passed.

To illustrate: In an investigation of the book-paper industry⁴¹

³⁷See account given in ch. 7, pp. 132-137.

³⁸Gadd, F. R., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1110.

³⁹Gadd, F. R., Exh. 5, *Record*, Vol. II, p. 1242.

⁴⁰See ch. 7, pp. 129-131.

⁴¹*Report of the Federal Trade Commission on the Book Paper Industry*, pursuant to Senate Resolution No. 122, dated August 15, 1917.

the Federal Trade Commission found that, while ostensibly the duties of the secretary of the statistical bureau to which most of the manufacturers belonged was to compile and distribute certain statistical information, in reality he was principally engaged in inciting members to increase their prices, this being done by correspondence, use of the telephone and telegraph, attending meetings, and holding personal conferences with members.⁴²

In the farm implement industry members often took it upon themselves to give notice to fellow-members when their prices were found to be out of line with those "recommended" by committees. On January 19, 1917, C. S. Brantingham, president of Emerson-Brantingham Co., wrote to one of his sales managers as follows:

"My attention has been called by a competitor to the fact that our recent instructions sent out to branches and competitors show sulky plows with an advance of fifteen per cent instead of ten per cent as was arranged. You can perhaps imagine my humiliation in getting this information from this source, inasmuch as they have before this called my attention to errors in getting out our price instructions."⁴³

The issuance of "recommendations" by committees of members is a common device for working up a unified sentiment that may be counted upon to crystallize into price maintenance or price enhancement activity. This practise has been particularly prevalent in the lumber industry. For instance, in its report before the Fall Meeting (1914) of the Michigan Hardwood Manufacturers' Association, the Market Conditions Committee stated in part:

"Your committee has carefully studied all recent sales as reported to your secretary and the attached price list is their best judgment as to present prices. We want you to study more carefully than you have heretofore statistics as to stock as prepared by your secretary. If you will study them carefully, we feel sure that each and everyone of you will decide to curtail your production all you possibly can and then some."⁴⁴

⁴²*Ibid.*, p. 17.

⁴³*Report of the Federal Trade Commission on the Cause of High Prices of Farm Implements*, May 4, 1920, p. 312.

⁴⁴*American Lumberman*, Oct. 24, 1914, p. 42.

Not only have recommendations and resolutions been used for the purpose of exerting a direct effect on price policy, but they have been used for the purpose of affecting the price policy of members indirectly through regulation of terms of payment. It is the writer's observation that nearly every trade association in the textile and lumber industries advocates standardization of terms. The Eddy associations appear not to countenance this form of activity. The Babson Statistical Organization once quoted to Mr. Eddy the opinion of a correspondent that terms of payment might properly be put upon a standard basis and asked Mr. Eddy to comment on this point of view. Mr. Eddy replied in part:

"It seems to be the opinion of your correspondent that while men may not advance prices directly, they may do so indirectly by shortening the terms of payment, etc. It is needless to say that all such attempts to control the freedom of the individual to run his business as he pleases, are contrary, not only to the Sherman Law, but to the laws of practically every state in the Union, and no open price association is permitted to do anything of the kind, except with the coöperation and consent of customers obtained in advance of the adoption of the new regulations."⁴⁵

The foregoing discussion, it is thought, makes clear without further demonstration that open price associations, or any other trade association for that matter, can all too easily extend their activities to the point where they become a detriment to the public welfare. The Federal Trade Commission, as a result of its investigations of numerous trade associations, concludes that "such associations are frequently tempted to extend their activities beyond the useful function of collecting trade information regarding supply and demand and prices, and to engage in activities tending to artificially control prices and the channels of distribution."⁴⁶ It is generally recognized that the present law enforcement machinery is inadequate to prevent lawless trade association bodies from committing abuses. Proposals for remedies have been made, but they are general and superficial in

⁴⁵Babson, R. W., *Reports on Coöperation*, C. C.-9.

⁴⁶Quotation in *American Lumberman*, Dec. 22, 1917, from *Annual Report of the Federal Trade Commission for the Fiscal Year ended June 30, 1917*, p. 31.

character—just what one might expect, considering the newness of the problem. The chief remedies proposed have been along the lines of greater publicity and more governmental supervision. A combination of these is advocated by Mr. Samuel Untermyer, New York attorney:

“The real way of preventing injury from these combinations,” he is quoted as saying, “is to subject them to publicity, and all their acts to rigid governmental supervision.”⁴⁷ His plan for controlling their activities by means of a State Trade Commission is the most concrete proposal for a remedy yet presented. The chief points called for by this plan may be briefly summarized as follows:

1. Creation of a State bi-partisan Trade Commission of six members.

2. Require every trade organization that is subject to the jurisdiction of the State to file with the commission a copy of its charter and by-laws, with the names of its officers, directors, and members.

3. Require all those engaged in business in the State to file a report with the commission disclosing all trade associations of which they are members, and any “agreement, arrangement or understanding, whether written or oral” with anyone else engaged in a similar line of business.

4. Prohibit those who do not make proper disclosures from remaining affiliated with any trade associations.

5. Permit members to participate in agreements, arrangements or understandings intended to regulate or affect or fix prices, or output, or the division or apportionment of territory, or the “reporting or exchange of cost prices, or the names of customers, or reports of sales, or that otherwise deal with any subject that tends or is intended to regulate or restrain competition,” provided “such agreement, or understanding, whether written or oral, shall have first been submitted to the commission and approved by it.”

6. No agreements, arrangements, or understandings are to be approved by the commission “unless or until the commission shall have approved the prices at which commodities are to be

⁴⁷*The World*, Sept. 15, 1920.

sold which may not permit of a profit beyond that which the commission deems to be reasonable, nor unless all the terms and details have been exposed to the commission and have been approved by it."

7. Failure on the part of members who are parties to agreements, arrangements, or understandings to comply with the provisions as above outlined shall make them guilty of a misdemeanor and upon conviction they shall be punished, etc.

8. The Trade Commission shall have the same powers of supervision and visitation, etc. "as are now possessed by the Federal Trade Commission with respect to interstate corporations."⁴⁸

Mr. E. H. Gaunt, a prominent secretary of several open price associations, favors legislation that would give the Federal Trade Commission power to permit trade associations to fix the price of articles sold by their members, this price to be a fair one based on accurate costs. "This could be done," says Mr. Gaunt, "in the same manner as the Public Service Commissions of various States control the price of gas, electric lights, railroad rates, and street-car fares by requiring trade associations to file with the Federal Trade Commission their proposed changes in prices."⁴⁹

The policy of price fixation involved in both Mr. Untermeyer's plan and that of Mr. Gaunt has its obvious drawbacks. To review the arguments for and against this feature would extend the scope of this chapter unduly. Suffice it to say, that many economists of eminence as well as prominent men in other professions hold that price fixing under control of Government commissions is not desirable. Perhaps their leading argument is that such a course has the effect of checking technical development, because with prices fixed, incentive to improve processes with a view of increasing business by lowering prices below those of competitors is diminished.⁵⁰ A study of war experiences with

⁴⁸For a more detailed account of the Untermeyer Plan, see *The World*, New York City, Sept. 15, 1920.

⁴⁹Gaunt, E. H., *Coöperative Competition*, Providence, R. I., Jan., 1918, p. 32.

⁵⁰Clark, J. B., "The Possibility of Competition in Commerce and Industry," *Annals of the American Academy of Political and Social Science*, Vol. XLII, No. 131, p. 63.

government price fixing ought to contribute a vast amount of data of value in determining the advisability of adopting a plan involving this feature.

The Babson Statistical Organization contends that most violations of the law result from ignorance on the part of business men as to what they may or may not do under the law; this institution accordingly advocates legislation conferring power upon the Federal Trade Commission to advise business men in advance whether their acts will be legal or illegal.⁵¹ Others have contended that the Department of Justice should do the same thing.

However, Mr. Colver, a member of the Federal Trade Commission, has asserted that it is not possible to give "rulings in advance." "To begin with," Mr. Colver is quoted as saying, "no man can say what his conduct is going to be for the next year, the next week, or the next hour. Even if he did, no man knows what the reflex of any act which he may do may have upon some other man. He looks at his line of conduct from his own point of view, and may be sincere and honest in believing it to be a good thing; but he does not and can not know how, in the complex web of modern commercial relations, his conduct may react upon another. That seems to bring us to an impasse. We cannot repeal the law; the lawyers cannot tell you what it means, and the Federal Trade Commission cannot prophesy. That leaves business in doubt, and doubt breeds suspicion and fear and despair; sometimes it breeds defiance of law."⁵²

As a result of their study of trade associations both the Federal Trade Commission and the Forest Bureau of the Department of Agriculture have concluded that throwing the light of publicity on the activities of these associations offers at least a partial remedy for abuses now rampant. The Forest Bureau thinks that the activities of trade associations can be safeguarded by the coöperation and control of a responsible public agency like the Federal Trade Commission, and by systematic publicity.⁵³

⁵¹Babson, R. W., *Reports on Coöperation*, C. C.-6.

⁵²Quoted in the *American Lumberman*, June 19, 1920, p. 44.

⁵³This report refers more particularly to trade associations in the lumber industry. See Report of the Forest Service, *Some Public and Economic Aspects of*

In its annual report for the year 1917, the Federal Trade Commission recommends that "all trade association files should be made public records."⁵⁴ "Such publicity," declares the commission, "would extend the knowledge of all producers and consumers regarding conditions of supply and demand and help to prevent abnormal trade fluctuations in supply and prices. It would also tend to curb association activities of an objectionable character."⁵⁵

Neither the Forest Service Bureau nor the Federal Trade Commission has done more than suggest the direction in which to seek a remedy. In other words the suggestion is not accompanied by a working plan. It is believed that a study of the possible means for putting into practise this plan of publicity will reveal some very knotty problems to be overcome before the plan can be put into operation. Our study, thus far, has revealed that membership in even the most successful associations represents only a moderate proportion of the persons who are eligible to membership. The inducement to membership is, first, that the association is a benefit to the industry as a whole; second, that the association is, in a direct and personal way, of benefit to the individual members. It goes without saying that usually the second inducement must be strongly present in order to impress prospective members sufficiently to cause them to join. The average association member has joined because of the belief that by so doing he can acquire valuable information that would otherwise not be accessible to him. But suppose that the association records were, as contemplated in the plan of the Federal Trade Commission, made freely open to the public, would not that take away the chief incentive that members have for joining? Why pay out material sums to cover the expense of collecting and disseminating these facts when non-members may secure them without contributing anything? It is manifest that the suggestion of the Forest Service and the Federal Trade Commission would have to be accompanied by

the Lumber Industry, June 24, 1917, Gadd Exh. "A," *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1198.

⁵⁴Quoted in *American Lumberman*, Dec. 22, 1917, p. 26.

⁵⁵*Ibid.*

provisions that would make their plan of publicity workable and equitable.

It is thought that trade associations honestly endeavoring to operate along legitimate lines would find it distinctly to their advantage to take the initiative, themselves, in admitting the public to a share of the results of the knowledge which they are pooling. The statistics published might be of such a character as to be instructive to the public and yet not disclose information of more particular value to members themselves, thereby preserving, perhaps, the incentive that under the present arrangement of things seems to be needed to induce membership. The statistics made public might relate to the industry as a whole, showing, for instance, the character and amount of annual output; the percentage of fluctuation in amounts on hand from year to year; the relation of prices to cost of production; and of profit to capital. Sketches of any developments in the industry such as amalgamations, new issues of capital, changes in directorates, et cetera could also very well be made public.

A policy of frankness, such as a step of this kind would entail, might help trade associations to break down the prejudice, suspicion, and distrust to which the public in a large degree makes them the object, and which is reflected to their disadvantage in hostile government action. With adequate data at their disposal, the public could in a large measure arrive at their own conclusions regarding the reasonableness of prices, wages, profits, et cetera. Many unfounded and exaggerated suspicions would be dispelled thereby, and many allegations of profiteering or exploiting now blindly hurled at the undeserving as well as the deserving would fall of their own weight. The educating effect on the consumer, investor, legislator, and business man would itself be helpful to the trade associations themselves as well as to the recipients of this education; in the course of time these various groups would come to understand the possibilities involved in helpful coöperation.⁵⁶

Trade associations engaged in illegitimate trade practises that now find it possible to thrive unmolested because of the

⁵⁶The gist of this line of argument is taken from an article, entitled "Trade Combinations," by C. Ernest Fayle, appearing in the *Edinburgh Review*, July, 1919.

prevailing state of public ignorance of their operations, would undoubtedly be obliged to reform were the glaring searchlight of publicity turned upon them.

The rise of trade associations may itself be taken as evidence that the policy of secrecy in business is being rapidly exploded. Open price associations go further in sanctioning publicity than do other trade associations, but even they show a disposition to confine the information at their disposal to their own members. It is believed that in the future the public will insist on sharing the benefit of the knowledge that is being pooled by these associations. Certainly in its capacity of purchaser, the public will be at a relative disadvantage unless it possesses knowledge of market conditions equivalent to that possessed by members in their capacity of sellers. However, if the public is to insist on having the benefit of this accumulated knowledge it must not demur at sharing the expense which is necessarily associated with gathering, compiling, and disseminating information.

ATTITUDE OF THE FEDERAL GOVERNMENT

It is the writer's conviction that trade associations would be less secretive with reference to their activities if they had some assurance that by doing things publicly they would not be laying themselves open to attacks by the Government. In other words many associations have sought cover because of the hostility shown them in the past. The misdeeds of some trade associations have resulted in enveloping all, good or bad, in a storm of public and governmental disapproval.

The conception has prevailed in governmental circles that the only true competition is competition carried on in secret and in ignorance. Thus trade associations have been shown hostility because they have tried to make their members intelligent competitors. The point of view that business men should compete in ignorance is well illustrated by the tenor of the questions put to Mr. Wm. J. Mathews, counsel for several open price associations, by Mr. Samuel Untermyer who was appointed to conduct the hearings before the New York Joint Legislative Committee on Housing:

Q. "Now we are talking about competition and you are talk-

ing about coöperation, which is to my mind the antithesis of competition. Now in an economic system such as ours in this country, based upon competition, you understand?" A. "Yes."

Q. "Don't you see how absolutely incongruous is the idea that every competitor should know every other competitor's business?" A. "Absolutely not."⁶⁷

However, there is evidence on every hand that the attitude of governmental bodies toward coöperative activities is changing.

In the case of the United States vs. United States Steel Corporation, the Department of Justice made the following concession in its original petition: "It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or a combination in restraint of trade."⁶⁸

A letter written by President Wilson to Edward N. Hurley, then vice-chairman of the Federal Trade Commission, dated May 12, 1916, has been widely quoted as indicating the attitude of the administration under the Wilson régime. In this letter Mr. Wilson said in part:

"Your suggestion, that trade associations, associations of retail and wholesale merchants, commercial clubs, boards of trade, manufacturers' associations, credit associations, and other similar organizations, should be encouraged in every feasible way by the Government seems to be a very wise one. To furnish them with data and comprehensive information in order that they may more easily accomplish the result that they are organized for is a proper and useful Government function. These associations, when organized for the purpose of improving conditions in their particular industry, such as unifying cost accounting and book-keeping methods, should meet with the approval of every man interested in the business progress of the country."⁶⁹

Significant of the trend of opinion is the passage of the Webb-Pomerene Law permitting combinations of American business

⁶⁷Hearings before the New York Legislative Committee on Housing, Dec. 29, 1920, *Record*, p. 4638. For an account of the writer's conception of true competition, see ch. 3, pp. 44-47.

⁶⁸U. S. vs. U. S. Steel Corporation, 223 Fed., 155.

⁶⁹Quoted by E. N. Hurley in his article entitled, "Present Attitude of the Gov-

men in promoting and preserving foreign trade. This bill received the active support of the Federal Trade Commission and President Wilson.

Mr. Robert E. Belt, then Chief Accountant for the Federal Trade Commission, in an address before an association of hardwood manufacturers, January 30, 1917, endorsed the work done by open price associations in the following language: "My observation has been that the associations that are accomplishing most in a legitimate way, for the individual members and for the industry, are those associations where the members meet periodically to exchange information, compare experiences, discuss trade problems, and profit by the interchange of ideas. It appears to me that coöperative work of this character is essential to the economic and financial strength of our industries, and to the full development of our domestic and foreign trade."⁶⁰

Those who are identified with the work of open price associations appear to view favorably the turn taken in the point of view of those in control of governmental affairs. Mr. Clark McKercher, former assistant to the United States Attorney General, now counsel for a number of open price associations, is quoted as saying early in 1917: "General business believes that the Government is now on the right track. * * * * * Government espionage, once feared as a counter irritant to all industrial disturbances, has under the intelligent guidance of the Federal Trade Commission turned out to be an admirable corrective and a beneficial stimulant. With a restricted jurisdiction, the Commission has been decidedly encouraging in its helpful activities. It is making good on the promise of Commissioner Hurley, who, after speaking of the assistance rendered to business by the Interstate Commerce Commission, Department of Agriculture, and the Federal Reserve Board, said, 'To do for general business that which these other agencies do for groups

ernment towards Trade Associations," *Heating and Ventilating Mag.*, Sept. 1916, Vol. XIII, pp. 46-47.

⁶⁰Belt, R. E., *Improved Accounting Methods and Business Practises*. An address before the Hardwood Manufacturers' Association of the United States, Jan. 30, 1917, *American Lumberman*, Feb. 3, 1917.

to which I have referred was the thought behind the creation of the Federal Trade Commission.⁶¹

The recent action of the Federal Reserve Board, acting through the Federal Reserve Banks, in developing a system under which trade data are to be collected and distributed much in the same manner as is done by the typical open price association is highly significant because it amounts to an admission on the part of an important branch of the Government that the methods employed by these associations have a distinct value. The fact that the Federal Trade Commission some months ago worked out a plan almost identical to that of the Federal Reserve Board is of added significance. The plan of the Commission had to be abandoned because its facilities were unequal to the task.

The plan promulgated by the Federal Reserve Board is described in a general way in a pamphlet entitled *How is Business*, published early in 1920 by the Federal Reserve Bank of Philadelphia. In brief, the purpose is to secure from representative firms in each of the more important lines of industry, certain figures relating to their production, stocks, unfilled orders, et cetera. The same firms will be asked to make these reports at monthly intervals. The figures collected are then to be compiled so as to show certain facts for the industry as a whole, such as the increase or decrease in production "from a known standard;" the increase or decrease in unfilled orders, and the increase or decrease in raw materials and finished product on hand. The work of assembling and disseminating such figures as these has already been begun in some fields, notably in the textile and wholesale grocery lines.⁶²

Indorsement of open price activity, at least as applied to the lumber industry, has also been given by the Forest Service Bureau of the Department of Agriculture. In its report on the lumber industry issued in 1917, it specifically recommended that associations furnish lumber manufacturers with the current trade statistics necessary to keep them informed on the condition of the market, in order that they might "adapt their own business to its changing requirements," these statistics to include data

⁶¹New York *Journal of Commerce*, Jan. 3, 1917.

⁶²Federal Reserve Bank of Philadelphia, *How is Business?*, pp. 2, 4, 6.

on the volume of orders, shipments, lumber stocks on hand, and prices. The report concludes that "with adequate safeguards the public should encourage such forms of coöperation among manufacturers as a necessary means of making the lumber industry more efficient."⁶³

That the various branches of the Government are veering into the position of recognizing the value of open price activity, when it is not perverted to the end of maintaining or enhancing prices, seems to be amply demonstrated in what has gone before. No doubt the war did much to bring about this revolutionary change in the attitude of the Government toward trade associations, altho it is probably true that it would have come about had there been no war, for signs of such a change were clearly visible prior to that event. Nevertheless, had not the war intervened, the change would undoubtedly have come about more slowly than it did. During the war the Government fell into the habit of depending upon trade associations for aid in lining up the various industries so as to achieve maximum efficiency of production. In fact, the Government, during the last few months of the war, told firms and individuals who were not then members of trade associations, that if they wished to do business with the Government they would be obliged to get into organizations and do business as organizations and not as individuals.⁶⁴ It may confidently be predicted that governmental recognition of the necessity for industrial organization will not lapse even tho the pressing circumstances which were instrumental in calling it into being are no longer existent. The Government has taken a step which it is not likely to retrace.

⁶³Report of the Forest Service Bureau, *Some Public and Economic Aspects of the Lumber Industry*, Jan. 24, 1917, pp. 1197-98.

⁶⁴Kellogg, R. S., *The Legitimate Functions of Trade Organizations*; an address delivered before the Business Secretaries Forum, Chicago, Illinois, Jan. 25, 1918, p. 7.

CHAPTER IX

SOME CONSIDERATIONS INVOLVED IN A STUDY OF THE INFLUENCE OF OPEN PRICE ACTIVITY ON PRICES

To attempt to ascertain with any degree of accuracy the effect on prices exerted by open price activity is indeed a most difficult task. The youthful character of the open price association taken together with the numerous and confusing influences at work, particularly during the last few years, makes the value of a study of this character problematic. Moreover, the data upon which to base such a study are difficult of access. Those who are in control of open price associations hesitate to permit outsiders to avail themselves of the information that has been accumulated—especially of the kind bearing on prices. Perhaps their attitude may be chiefly ascribed to a fear that such information, were it released, might come into the hands of those who would attempt to use it to jeopardize the interests of open price associations, or perhaps they are actuated by the feeling that as custodians of the information which members have imparted to them they are not privileged to make common property of it, and that to do so would be to violate the confidence members have reposed in them.

Altho the inaccessibility of competent price data makes it futile to attempt to formulate any conclusions based on statistics respecting the effect of open price activity on prices, it is believed that some progress looking toward an ultimate solution of this knotty problem can be made by pointing out, first, the probable method of approach in the solution of such a problem; second, influences at work tending to vitiate the accuracy of results derived from a study of this character; third, influences tending to confine prices to channels in which they would be expected to run if their course were not upset by open price operations;

fourth, influences tending to swerve prices away from the course that they would be likely to take in the absence of open price activity; fifth, the probable effect on prices of the interaction of these conflicting influences.

METHOD OF ASCERTAINING INFLUENCE ON PRICES

It is believed that the best method to pursue in determining the influence of open price activity on prices is to compare price data of two kinds. The first kind involves a comparison of prices obtained by members of open price associations with those received by non-members. The object of this investigation is to determine, first, if all members are getting the same prices as non-members or higher or lower prices; second, if periodic fluctuations in members' prices are more pronounced or less so than those of non-members. The second kind involves a comparison of the prices obtained by members themselves. The object of this investigation is to determine to what extent, if at all, prices show a tendency to become uniform.

The commodities involved must, of course, be of like kind. Likewise the investigation should cover a period of several years. It should also be established that the non-members whose prices are used have had no access to the information pooled by members.

Information bearing on prices received by members of open price associations can most conveniently be obtained from the compiled reports of sales issued at periodic intervals to the membership by the central office of each of these associations. Most of these compiled sales reports not only show the individual membership reports of prices, but also give the average of all prices reported for the period. It is thought that sufficiently accurate results can be secured by using these reports of averages. To get accurate price data pertaining to competitors who are not members of open price associations in their industry, it would seem necessary to go to the records of non-members themselves. No doubt it is very difficult to obtain adequate data from a sufficient number of competitors to make these data representative. Probably very few non-members can be found who have preserved records of sales for several consecutive years.

The question might be raised why prices given in trade journals, or in the reports of the Bureau of Labor Statistics or other recognized sources of price information may not properly be used to represent the prices obtained by non-members. The difficulty with this proposal is that these prices are a composite of prices received in the industry as a whole; for this reason they are representative of neither the group of non-members nor the group of members but of both groups. If the industry were wholly within the control of an open price association, figures taken from these sources might be of some value when compared with figures covering a period prior to the existence of the association, provided that proper allowance could be made for such changes in the economic situation as might have occurred in the course of the transition from one period to the other.

Altho it appears exceedingly difficult to obtain competent data at the present time, even if no other sources of information are made available, no doubt future litigation involving open price associations, or investigations made of them by the Federal Trade Commission, will reveal much information of an illuminating character bearing on prices received by non-members as well as members.

The record of the *United States vs. The American Column and Lumber Co. et al.* offers the first considerable contribution of price data available for study. In this case the defendants introduced several charts indicating prices received during 1919 for different kinds of hardwood by competitors who were not members of the "Open Competition Plan". This open price plan was that in use by the American Hardwood Manufacturers' Association.¹ In addition the defendants introduced copies of all the sales reports compiled by the manager of statistics and disseminated among the membership during the year 1919. This was done in order that comparisons might be made between prices charged by members and prices charged by non-members, the contention of the defendants being that such comparison would reveal that members were neither maintaining fixed prices nor were they obtaining prices any higher than those received by outside competitors. The Transcript of Record, which was all of

¹See account of plan in ch. 7, pp. 137-148.

the record that was accessible to the writer, contains charts giving the prices that were received by certain non-members for the entire year of 1919,² but the reports of sales, showing prices received by members during 1919, are not given in their entirety in the Transcript of Record.³ The Manager of Statistics, however, placed at the writer's disposal all of the sales reports issued during 1919. It was found possible to extract price data from these reports of sales which were comparable to the data contained in one of the charts showing prices received by a non-member. Prices received by non-members as shown in the other charts could not be made comparable with prices contained in the reports of members' sales because kinds, grades, or thicknesses of lumber did not correspond. In the instance where it was found possible to make a comparison, the graphs which the writer plotted to show the trend of prices in each case disclosed that the average prices received by members of the association for the year 1919 were no higher than those received by this particular non-member.⁴

The writer also prepared a chart with four graphs, three of them showing the average weekly prices received by three leading members of the association, the fourth showing the average weekly prices of all members. The period covered was from July 26th, 1919, to December 27th, of the same year. An examination of this chart reveals at a glance that the prices received by each of these manufacturers varied widely from time to time; nor can one trace any existing relationship between the prices received by the manufacturers and the average prices received by all the members.⁵ Assuming that the trend of these prices may be considered typical of that of all the other members, the inference to be drawn therefrom is that open price activity among members of the Hardwood Manufacturers' Association did

²*Record*, American Column & Lumber Co. vs. U. S., Vol. III, Krebs Exh. No. 1, p. 1509; May, Exh. No. 1, p. 1513; Wertz Exh. No. 1, p. 1613; Thomas Exh. No. 1, p. 1398.

³Reports of sales are shown for the month of January, 1920, *Record*, Vol. I, Exh. "A," p. 33.

⁴See chart No. 1, in this chapter, p. 178.

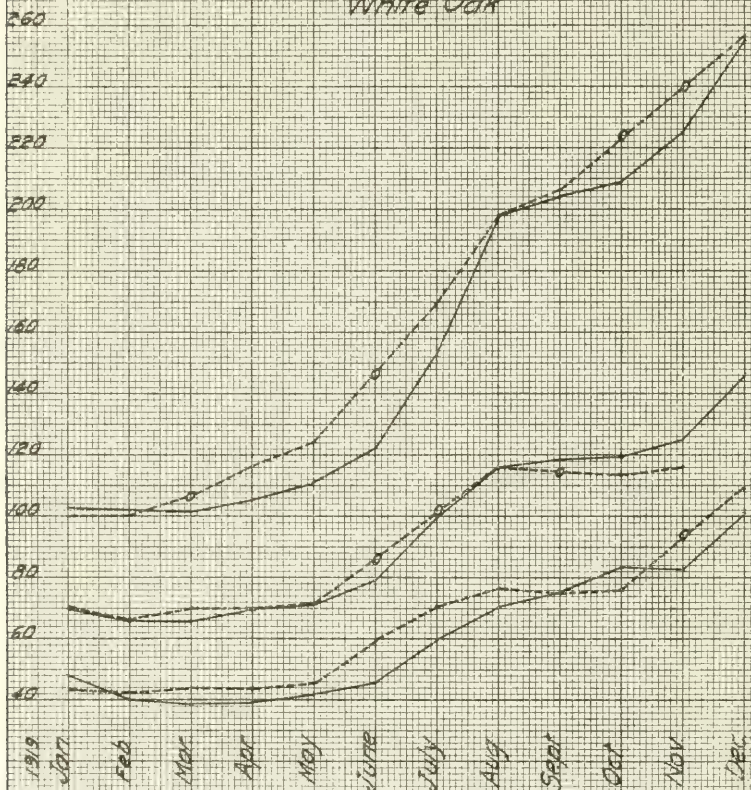
⁵See chart No. 2, in this chapter, p. 179.

COMPARISON OF MONTHLY AVERAGE PRICES
RECEIVED BY MEMBERS OF AMERICAN HARDWOOD
MANUFACTURERS ASSOCIATION WITH THOSE
RECEIVED BY A NON-MEMBER

Dollars
per
1000 Ft.

CHART NO 1

White Oak



Graph I - First and Second
Quartered White Oak

Graph II - First and Second
Plain White Oak

Graph III - No. 1, Common
Plain White Oak

Full American Hardwood
Manufacturer's Assn.

Dotted: McLean Hardwood
Lumber Co.

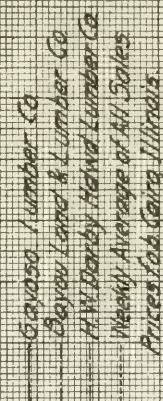
0 indicates that no sales were
made that month.

Prices for Cairo, Illinois

THE UNIVERSITY OF CHICAGO

259

197 Common and Selects Plain Red Gum



Prices for Cairo, Illinois

12	12
11	11
10	10
9	9
8	8
7	7
6	6
5	5
4	4
3	3
2	2
1	1
0	0
9	9
8	8
7	7
6	6
5	5
4	4
3	3
2	2
1	1
0	0

not lead to uniformity in price policy, at least during the year 1919.

That the statistical conclusions indicated on the charts drawn by the writer, altho inconclusive in themselves because based on inadequate data, truly depict the character of the prices received by members during 1919 is attested to by several purchasers who stated that the prices paid by them to different members were neither uniform nor were they any higher than those paid to non-members.⁶

In this connection it must be pointed out, however, that the price data taken from the association reports of sales cannot properly be used as a basis for determining the effect of open price activity on prices, because, as indicated elsewhere,⁷ only to a very small extent did members use the sales reports issued in 1919 as a guide to the trend of the market, for by the time that they were received from the manager of statistics (a week or two subsequent to the time when the sales listed were made) current market prices had advanced so far ahead of those listed on sales reports, that the latter, if they had been taken as a guide would in a great many instances have resulted in sales at prices below the current rate. Only the class of small manufacturers seem to have derived any benefit from studying the sales reports. Even tho the prices listed on the sales reports were below the best market prices then prevailing, yet they were higher, apparently, than the ones these small manufacturers had been accustomed to receive prior to their entry into the association. Of the numerous letters received by the manager of statistics in commendation of the Open Competition Plan, all of those which pointed to the fact that the plan had enabled members to get better prices, were from small manufacturers.⁸ An unprecedented demand, accompanied by a shortage of supply, resulted in such a rapid advance in prices that the sales reporting system proved unequal to the task of keeping members properly apprised of the latest price developments. It is obvious, therefore, that the results obtained by the writer

⁶See *Record*, Vol. II, pp. 1372, 1367, 1394, 1395; Vol. III, p. 1563. See Chart No. 3, in this chapter, showing variation in prices received by members during 1919. p. 181.

⁷Ch. 6, pp. 124-125.

⁸Boyle, L. C., Argument before the Supreme Court, p. 68.

APPENDIX A

GADD EXHIBIT "J"

Compilation which discloses the wide variation of prices received by the members for the same species, grade and thickness, collated from the sales reports and used in charts marked exhibits.

One inch No 1 Common (and selects where the Grade is combined) Hardwood Lumber

F. O. B. CAIRO, ILLINOIS

F. O. B. CINCINNATI, OHIO

Date of Report 1919	Plain Red Gum		Sap Gum		Plain White Oak		Cottonwood		Poplar		Chestnut	
	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low
Jan. 3							35.00	35.00	57.50	53.00	40.00	39.75
10	38.50	37.50					30.75	30.75	57.00	57.00	55.00	55.00
15					51.25	46.75			57.75	52.50		
25			33.75	25.50	42.50	38.25	36.00	32.00	57.00	50.00	47.50	47.50
Feb. 3	36.50	27.75	31.00	27.50	42.25	36.25	36.50	35.00	58.00	47.75	45.00	35.50
8	38.25	31.50	31.75	28.00	45.50	38.50	40.50	40.50	57.00	54.50	46.00	40.00
15	41.25	33.00	31.75	27.50	43.25	38.25	35.75	34.25	55.25	44.75	42.75	38.25
22	40.00	33.75	33.00	27.75	46.25	38.00	36.50	24.50	53.00	38.75	46.00	35.25
Mar. 1	40.00	33.25	36.00	26.75	46.25	39.75	38.75	32.75	64.00	39.50	45.75	30.00
8	40.50	32.50	30.75	26.75	45.50	36.75	35.00	34.00	58.00	46.00	43.00	38.25
15	38.50	33.00	30.50	27.50	46.25	39.00	37.25	34.00	62.25	48.00	46.50	38.00
22	49.25	33.50	37.75	27.50	41.75	37.75	36.75	34.75	61.00	42.25	40.00	37.75
29	43.25	32.00	34.50	26.25	49.75	38.25	37.25	33.50	56.00	43.00	45.50	38.25
Apr. 5	41.75	27.25	32.00	28.00	44.00	38.25	36.50	33.75	55.50	43.00	46.00	38.25
12	41.00	33.75	30.75	27.50	42.25	38.75	37.00	33.00	55.00	45.25	51.00	38.50
19	39.75	33.75	32.75	28.00	46.75	34.25	37.25	35.00	59.00	49.75	46.75	38.50
26	40.00	29.50	37.75	26.75	48.75	36.50	37.00	33.00	56.50	48.00	45.00	34.00
May 3	41.75	33.00	32.25	26.75	47.00	36.25	36.75	35.50	57.00	51.00	43.00	38.50
10	43.25	33.50	33.50	27.25	48.75	39.50	37.75	33.25	64.00	48.75	46.50	38.25
17	43.75	35.25	37.50	27.25	50.75	36.25	37.50	35.50	61.00	47.00	51.00	38.50
24	44.25	35.75	34.00	26.75	48.50	39.25	40.25	36.00	61.00	46.50	44.00	38.25
31	47.00	35.00	36.00	29.00	51.50	38.25	39.00	33.75	56.00	45.50	46.50	38.50
June 7	49.75	38.25	36.50	28.50	53.50	45.50	43.50	35.25	57.50	50.25	46.00	42.00
14	52.75	37.00	40.25	29.75	60.00	38.00	42.00	36.50	61.00	48.50	53.75	40.50
21	56.25	42.00	37.00	28.75	59.50	41.75	42.50	33.75	60.50	48.75	48.50	37.75
28	66.50	40.75	43.50	31.25	76.00	40.00	40.25	36.50	67.00	52.50	47.50	42.75
July 5	63.75	42.75	41.50	32.00	69.50	49.00	39.25	38.00	65.00	48.75	48.50	41.00
12	70.25	36.75	47.00	30.75	74.25	61.00	41.00	41.00	66.00	52.50	52.00	43.00
19	71.75	53.75	47.00	32.50	77.25	52.75	50.25	39.25	71.00	55.50	45.00	45.00
26	76.00	52.25	44.50	31.25	79.50	54.75	45.75	35.50	72.25	54.25	56.00	46.00
Aug. 2	84.00	53.00	54.75	36.25	81.00	49.25	46.75	37.00	65.25	47.50	61.00	47.00
9	77.75	54.25	49.50	32.75	84.00	58.25	46.75	45.50	73.75	55.00	53.50	52.00
16	86.00	64.25	55.00	38.25	85.00	60.00	49.50	43.00	73.25	57.50	47.50	47.50
23	82.50	65.25	51.25	41.25	84.00	67.25	47.50	44.00	75.50	58.25	53.25	51.00
30	81.50	58.25	48.50	41.50	81.50	59.50	48.50	44.50	70.00	58.50	63.00	53.50
Sept. 6	81.75	66.50	52.25	41.25	85.50	47.00	51.00	46.50	72.00	39.75	61.75	61.75
13	83.00	68.50	51.50	40.00	79.50	70.25	46.00	46.00	83.50	50.00	57.00	50.25
20	80.75	70.75	49.50	40.75	83.50	72.25	47.00	46.50	80.00	51.50	77.00	41.00
27	78.75	70.00	50.50	38.00	88.00	66.00	48.50	43.00	86.00	55.50	59.50	59.50
Oct. 4	80.00	68.75	52.25	42.00	81.50	49.00	50.00	44.75	79.00	60.00	68.00	55.25
11	82.25	67.00	52.50	38.50	83.50	72.50	51.50	43.75	83.25	61.00	66.00	66.00
18	79.00	67.00	50.25	41.75	83.75	57.25	50.25	45.00	71.25	71.25	72.00	59.00
25	79.25	68.00	53.25	41.50	86.00	73.00	45.75	40.50	75.00	65.00	61.75	57.25
Nov. 1	85.25	70.75	51.75	41.00	92.50	69.50	52.75	41.75	70.50	56.75	65.50	61.50
8	85.00	74.25	55.00	42.00	105.50	71.25	51.25	45.50	80.50	54.00	66.00	57.00
15	93.75	76.75	52.00	41.75	98.75	73.00	53.25	48.50	78.25	55.50	69.00	44.50
22	116.25	72.00	59.00	43.25	96.00	76.00	54.75	47.50	84.00	51.50	69.50	60.75
29	107.00	71.75	61.25	45.75	107.50	80.00	50.75	56.75	81.00	65.00	78.50	48.00
Dec. 6	116.00	78.00	66.25	41.00	107.00	80.75	56.00	48.75	81.75	74.50	73.25	73.25
13	115.50	91.25	69.00	48.00	109.75	93.00	64.00	55.50	96.00	68.50	85.25	55.75
20	128.50	93.75	71.75	45.50	114.25	93.75	71.00	55.50	106.00	67.50	84.50	61.00
27	140.50	121.00	73.25	40.25	110.00	94.50	64.00	49.25	91.75	74.00	93.00	92.00
1920 Jan. 3	134.00	116.25	76.00	46.25	130.75	93.50	76.25	76.25	85.00	72.00	82.50	82.50
10	156.00	82.00	84.50	55.75	132.50	102.25	74.00	50.75	88.25	65.00	82.00	60.75
17	156.00	112.00	83.25	64.00	140.00	103.75	81.75	64.50	116.00	80.25	99.50	62.00
24	161.00	122.00	81.50	55.00	153.75	99.50	80.00	67.75	116.00	83.50	123.25	81.50
31	157.75	134.00	95.25	69.50	149.00	100.00	89.00	77.25	130.00	76.75	103.50	103.50
Feb. 7	171.00	127.00	92.00	58.75	149.50	117.25	85.00	69.25	130.00	71.75	109.75	98.25
14	166.00	140.75	96.25	76.25	150.00	128.25	101.00	82.75	131.00	93.00	102.50	102.50
22	167.00	147.00	98.50	77.00	158.50	122.00	91.00	79.00	121.25	100.00	119.50	106.75
28	171.50	132.75	99.00	80.75	162.75	93.25						

CHART NO. III.

from a study of these sales reports reveals nothing of importance respecting the influence exerted by the open price system on prices. Perhaps it is reasonable to assume that on a rapidly declining market sales reports would have been equally worthless as an index of the trend of prices.

The failure of the sales reporting feature of the Open Competition Plan to fulfil its mission in this instance points to the important conclusion that, when confronted by abnormal conditions, the system may prove too inflexible to adapt itself to the new situation, the consequence being that the course of prices is less affected, perhaps, than it would otherwise be. Probably the course of prices would not be totally unaffected, because other features of the open price system might continue to function more or less normally. The open price machinery involved in the interchange of information pertaining to stocks, output and the like might continue to operate effectively.

THE NEED OF EXERCISING CARE IN CHOOSING DATA FOR STUDY

Considerable discretion must be exercised in making a choice of open price associations for study. Many so-called open price associations are in reality combinations in restraint of trade, seeking to conceal their real identity by calling themselves open price associations. Associations of this character accomplish their purpose to curtail production, or maintain or enhance prices by "educating" members to act in harmony in pursuance of a common policy.⁹ In its report on the lumber industry the Forest Bureau of the United States Department of Agriculture concluded that there was a clear-cut distinction between the services performed by open price associations and activities in restraint of trade.¹⁰ No doubt this is true, but as has been indicated in the preceding chapter, some so-called open price associations are so clever in their "educational" activities that only the most discerning are able to properly discriminate between these activities and those carried on by true open price associations which exist for the legitimate purpose of keeping members properly

⁹See Ch. 8, pp. 175-182.

¹⁰Report entitled "Some Public and Economic Aspects of the Lumber Industry," Jan. 24, 1917, *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1198.

informed of market conditions. If an investigator making a study of the influence of open price activity on prices were to commit the error of choosing for study an association more properly termed a combination, the results obtained from such an investigation would obviously be vitiated as far as being a reflection of true open price activity is concerned. Results of this kind would not only have no scientific worth, but, if given currency, might work a grave injustice to the cause of legitimate open price activity.

INFLUENCES AT WORK

It has been argued elsewhere¹¹ that a knowledge on the part of buyers and sellers of their own interest, implying a knowledge of all conditions that might have a bearing on the supply of and the demand for a given unit of commodity, together with the ability and willingness to act intelligently thereon, would result in similar exchanges taking place on similar terms; or to state the proposition in terms of price, it would result in the naming of an equilibrium price "for the same unit of the same quality of the same article in the same market." Jevons expresses the same thought when he says, that "in the same market, at any one moment there cannot be two prices for the same kind of article."¹² The concept here conveyed is undoubtedly at the basis (consciously or unconsciously) of the arguments of those who contend that open price work enhances competition and stabilizes prices.¹³

¹¹Ch. 3, pp. 44-47.

¹²Jevons, W. Stanley, *The Theory of Political Economy*, p. 91.

¹³By way of illustration of the point of view that open price activity tends to stabilize prices, an extract from a report rendered to members of the American Hardwood Manufacturers' Association by a committee appointed to look into the merits of the open price plan and devise a system applicable to the hardwood industry is quoted:

"By making prices known to each other they will gradually tend toward a standard in harmony with market conditions, a situation advantageous to both buyer and seller. The committee does not expect this plan to result in one price for any one grade and the difference between even the same grades of various manufacturers is well recognized. It is contended, however, that in a very short time the extreme range of prices on any one grade will be materially reduced and eventually the prices obtained will be in direct relation to the character of the grade offered and the prevailing market conditions." *American Lumberman*, Feb. 30, 1917. The Forest Service of the U. S. Dept. of Agriculture also concludes that open price

If all the factors in operation in the case of open price activity are identical with those which find expression in the law of supply and demand (i. e. the economic principle described above), it seems reasonable to conclude that open price work does lead to exchanges taking place on similar terms, with uniform rates emerging as a matter of course. It is conceivable, however, that price uniformity can emerge through association work, despite differences in the factors at work, but it is not thought that such uniformity will ensue as a result of sellers acting independently of each other in their capacity of bargain-ers, but rather that it will come as a result, not necessarily of direct agreement, but of the power of suggestion, perhaps, conveyed to members by precept or example emanating from leaders. By a long stretch of the imagination it is possible to conceive of price uniformity being achieved without premeditation—if members form the habit, for instance, of guiding their own price policy by that of one or two of the outstanding leaders in the industry. In fact, the consummation of such a result may be facilitated by the very ignorance of buyers. Lacking the power that comes with knowledge they are likely to look upon the competitive situation which confronts them as being unchangeable

work tends to unify rates. See *Report on Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber ownership*, June 1, 1920, p. 68.

The view that open price work increases competition may be illustrated by an extract taken from testimony given by W. M. Stark, a manufacturer of hardwoods, in the Hardwood case:

"Affiant says that from his observation of the Open Competition Plan, he is convinced that there is nothing whatever in the nature of the plan itself or its use by the American Hardwood Manufacturers' Association which has tended or will tend to suppress or restrict competition, but on the contrary, it tends to create a freer and broader and more unrestricted market in which all sellers and buyers may and do freely, actively and intelligently compete. While knowledge of market conditions will naturally and properly enable some persons to sell to better advantage than if dealing in the dark, this is only an incident of any open market against which should be considered the general effect on market conditions as a whole and in the long run. From this aspect, information which directs the production and selling efforts of lumbermen to supplying the market needs for which and market points at which there is the greatest demand, necessarily increases competition and works for the benefit of the buyers and consuming public. Obviously and properly, it also works for the benefit of the lumberman, as they can only profit by supplying the demand." *Record, American Column & Lumber Co. vs. U. S.*, Vol. II, p. 1260.

and may accept such prices as are quoted them out of a spirit of helplessness born of the feeling that they are powerless to do otherwise.

The problem which we face, then, is to determine to what extent there is justification for believing that open price work is a realization of the ideal kind of competition contemplated by the law of supply and demand, presupposing the existence of an open market in which numerous buyers and numerous sellers, each conscious of the bids and offers of the others, work out a common price. Assuming for the present that sellers, through open price work, possess sufficient knowledge of market conditions to enable them to act with intelligence in the furtherance of their interests, are also buyers in this happy position? The burden of the argument in chapter three is that they are not.¹⁴ In that chapter the reader's attention was called to the fact that Mr. Eddy designed the open price plan primarily from the point of view of the seller. Moreover the observation has also been made elsewhere that with a few exceptions, open price associations are not disposed to give buyers access to information which they have accumulated.¹⁵

Previous to the inauguration of the open price movement, buyers held the advantage in bargaining. By making wide inquiries for bids they were enabled to ascertain roughly, at least, what ruling prices were—and the accuracy of these prices was of course unquestioned. But the seller, as a rule, was in ignorance regarding the prices that competitors were asking, except in so far as salesmen and buyers kept him informed. The latter found it profitable to misrepresent to the seller the character of prevailing prices, with the result that the seller was often deceived into meeting prices which had never been quoted, the prices thus made being less than market conditions justified.

¹⁴See pp. 48-49.

¹⁵See ch. 4, p. 56, where it is stated that membership is usually limited to manufacturers in the particular line of business involved. The Federal Trade Commission in a report submitted to President Harding, April 17, 1921, is quoted as saying: "The collection and public dissemination of statistical data might make the operation of such associations (open price) of benefit to the producer and the consumer alike, but unfortunately the tendency is here manifested to confine the information to members." *Chicago Tribune*, April 18, 1921.

A notable exception is the American Hardwood Manufacturers' Assn.

With the initiation of the open price movement, however, buyers find the tables turned against them. They discover that they are at a disadvantage in bargaining, principally, first, because they do not know what other buyers are paying; second, because they are ignorant of the character of demand and supply; third, because they are unable to make accurate predictions of future market conditions. They lack the data upon which calculations of this kind are based. Much of these data, such as information bearing on production and stocks, for instance, is not obtainable by buyers except with the coöperation of the sellers. We have here, then, a situation in which the sellers as a class are well informed of market conditions, whereas the buyers as a class are poorly informed. Since one of the important premises to the law of supply and demand, namely, that both buyers and sellers must be acquainted with all conditions affecting their competitive situation, is violated, it follows that similar exchanges among buyers and sellers cannot take place on similar terms. Jevons specifically mentions imperfect knowledge of the market as one of the "extraneous circumstances" which interfere with the undisturbed functioning of this economic principle.¹⁶ The advantage enjoyed by the seller over the buyer in consequence of his superior knowledge of market conditions probably will express itself in the exaction of a higher price than would otherwise obtain. One must conclude, then, that members of an open price association are in a position to exact higher prices than they could were buyers equally well informed or were not open price activity existent.¹⁷

This conclusion, however, is based on the assumption that members are able to press their advantage to the limit without hindrance. Such a situation, of course, obtains only in theory. This invites the question: to what extent in practise may open price associations be able to utilize the theoretical advantage

¹⁶*Theory of Political Economy*, p. 91.

¹⁷The Secretary of the National Association of Purchasing Agents writes in part: "The real function of the open price association, as we see it, is to permit producers to charge for their commodities not on the basis of their production costs or real competition values, but on the basis of all that the market will stand. Naturally purchasing agents cannot be expected to sympathize with this view point." Letter from L. F. Boffey, Feb. 16, 1921.

enjoyed by them in consequence of their superior facilities for obtaining adequate market information? The task involved in bringing to light the numerous influences that are undoubtedly wrapped up in this situation is one that is difficult if not impossible of achievement. A study of those influences which suggest themselves to the writer convinces him that in practise open price associations are little able to utilize their superior knowledge of the market to the end of imposing higher prices upon the buyer.

Influences at work tending to minimize the effect of open price work on prices can be traced to the following sources: first, defects in the operation of the reporting system; second, failure of members to utilize the information conveyed to them through the reporting system; third, the limited sphere of control exercised by open price associations.

Defects in the operation of the reporting system manifest themselves chiefly in the following ways: first, by incomplete standardization of the articles about which price information is exchanged, making price comparisons more or less worthless; second, by the unreliable character of information collected and disseminated.

Obviously price comparisons can not be made if the articles about which price information is exchanged are not comparable in every respect. Differences in size, shape, quality, workmanship, and the like, are bound to reflect themselves in differences in price. Where these differences persist there is lacking the common basis for comparison that is needed if interchange of information is to have any effect on the course of prices. Standardization sufficiently adequate to make prices comparable is difficult of achievement. This fact has been commented upon in another connection.¹⁸

To what has been stated there by way of elucidation of some of the difficulties involved, may be added some comments by Mr. C. H. Rohrbach and John Allen Murphy taken from an article of theirs which appeared in *Printers Ink*: "The prices of leading makes of talking machines are not alike and no amount of price information could get them on the same basis, because they are not alike in quality and workmanship. Take leather

¹⁸Ch. 6, pp. 118, 125, 126.

belting, corsets, air compressors, office furniture, overalls, knit goods, hydraulic pumps, silverware, clocks, vacuum cleaners, etc.—some of which have and others have not an open price association. There are too many dissimilarities in these products to permit their getting on a uniform basis, and altho the open price idea may be of use in some such cases, it can only be of limited help to the individual manufacturer in determining what he shall get for his product. It can not establish a uniform price.”¹⁹

In chapter six where the advantages and disadvantages associated with open price work received attention, it was pointed out that the usefulness of the open price association is very frequently seriously impaired because the information interchanged is either inaccurate, misleading, or obsolete. If, for any of these reasons, members become distrustful of the reliability of the sources of information which they receive they are likely to act independently of that information and in consequence prices are less influenced than would otherwise be the case.²⁰

Failure of members to utilize the information conveyed to them through the operation of the open price system may be due either to a deliberate disregard of such information, or to inability to understand it, or to inability to act upon it even tho understood.²¹ One secretary writes that members have frequently addressed letters to him inquiring what ruling prices for certain commodities were, whereas the sales reports containing this information were probably lying on their desks at the very time when they were mailing their letters. Many members, no doubt, disregard the reports received because to properly understand and interpret them these reports must be given time and thought, and this they are unwilling to do. No doubt there are also those who cannot understand the reports. More often, perhaps, information is not utilized because members find themselves in a position where they are unable to act upon it. To give one instance,—information received from the central office may make

¹⁹Rohrbach, C. H., and Murphy, J. A., “The Reverse Side of the Open Price Association,” *Printer's Ink*, June 24, 1920, p. 41.

²⁰See pp. 122, 124.

²¹*Ibid.*, pp. 119, 120, 121.

it clear that market conditions are such as to make it feasible to cease manufacturing for a period. The necessity of meeting heavy overhead expenses may force the manufacturer to continue operations, despite the fact that his better judgment would dictate a policy of curtailment. Failure to utilize information is therefore another factor operating to prevent open price work from influencing the course of prices.

It is thought that because of the serious obstacles operating to prevent the spread of open price activity, particularly in the larger industries where competitors, as a rule, are relatively numerous, if statistics could be made available, they would disclose that open price associations do not enjoy a controlling influence in many, if any, of the larger industries.²² If this be true, there is ample reason to believe that open price associations, as constituted at present, are able to exert little influence on price movements. Their sphere of influence and control is confined within too narrow limits. They find themselves more or less helpless to influence the price situation, first, because of the presence of indirect and potential competition; second, because of the power exerted over price movements by competitors who are not association members. By reason of the danger of competition from substitutes and new capital, prices are likely to be confined to narrower limits of variation than would otherwise be the case. What these limits will be, assuming that no other conflicting factors enter into the situation, will largely depend, on the one hand, upon the ease with which potential competition can become actual competition, and on the other hand, upon consumers' willingness and readiness to resort to substitutes.²³

If the sphere of control is insufficient to permit the educating influence of the association to be felt by competitors in whom are represented a substantial proportion of the total productive capacity of the industry, it appears more than probable that the competitors outside the sphere of this influence will be more

²²For discussions bearing on this matter, see ch. 1, pp. 5-6; ch. 6, pp. 113-126.

²³Mr. H. R. Tosdal, in an article on "Open Price Associations," concludes that, "in the absence of some basis for monopoly, the condition of higher than normal return would attract new capital and eventually the rate of return would be restored to normal." See *American Economic Review*, Vol. VII, No. 2, June 17, 1917, p. 352.

instrumental in determining the price situation than will association members. Competitors outside the ranks of membership are presumably less well informed about conditions affecting the market than are members. As a class their knowledge of the costs of doing business is less thoro.²⁴ Lacking information bearing on the character of the competitive situation, and being relatively ignorant of costs, it is very probable that in their anxiety to make sales they will permit themselves to quote lower prices than they would if they were acquainted with all the facts. The disposition of many buyers to take advantage of the ignorance of sellers, inducing them through misrepresentation to quote lower prices than competitive conditions warrant, gives added weight to this prediction. Knowledge brings power. Lacking knowledge, it becomes almost a certainty that competitors outside the ranks of membership in an open price association will obtain lower prices than those inside. Many manufacturers of hardwood lumber, particularly those who had no sales organization, attested to the fact that they had sustained losses which they could have averted if they had had proper market information. Other manufacturers, not belonging to the American Hardwood Manufacturers' Association, who had sales organizations, fared a little better because their salesmen kept them acquainted in some degree with the trend of the market.

If low priced competitors are present in an industry in sufficient numbers they are likely to exert the principal determining influence in the establishment of market rates for purchasers will give their custom to those who make the best prices, assuming that all other conditions entering into the situation are equal. The fact that all other conditions are not on a par of equality probably accounts in some degree for the fact that prices which are recognized as being typical of the market are somewhat higher than those obtained by the lowest priced competitors. For one thing the lowest priced competitors may lack the necessary

²⁴Mr. E. N. Hurley, former chairman of the Federal Trade Commission has stated that only 10 per cent of manufacturers and merchants know the cost to manufacture or sell their products; that 40 per cent estimate what their costs are and 50 per cent have no method of determining their costs but price their goods arbitrarily. See article in *Metal Worker, Plumber & Steam Fitter*, "Trade Associations and Business Methods," Vol. CXXI, p. 473, Jan. 9, 1916.

productive capacity to handle large orders; then, too, their product may not be up to standard, or they may be unreliable in some other way. Nevertheless, the influence of these low prices, as well as those not so low, quoted by non-members, exposes members to the danger of losing some of their custom. If the productive capacity represented by these outside competitors is sufficiently great, members will be compelled to place their rates in line with theirs in order to insure for themselves the share of business to which they have been accustomed.

That some open price associations are cognizant of the fact that their limited sphere of control makes them more or less helpless to exert any substantial influence on the price situation is evident from the following extract taken from a letter received by the writer from the Secretary of the Northern Hemlock and Hardwood Manufacturers' Association:

"In view of the fact that the members of our Association produce only a part of the lumber produced in this territory, in view of the further fact that this territory produces only a small part of the lumber consumed in its markets, we cannot say that the information we have supplied our members has had any particular effect on market value fluctuations.

"There is about sixteen times as much Pine produced as there is of Hemlock from our territory and six or seven times as much Western Lumber and all of these come into direct competition in the Chicago market belt.

"Freight rates have long been so adjusted as to bring this about. Our Hemlock prices are determined by the market values of Southern Pine and Western Fir and our Hardwood values are determined by the market values of Oak, Gum and Ash, all of which are produced in much greater quantities in other sections of the country, but adopted to the same uses as our Birch, Beech and Maple.²⁵

No doubt there will be found many instances where individual members have succeeded in getting better prices as a result of participation in open price work. That does not mean, however, that the association (assuming that it does not enjoy a controlling influence in the industry) has succeeded in raising

²⁵Swan, O. T., Letter dated Jan. 4, 1921.

prices in the industry as a whole, nor is it probable that in the instances where members have been able to obtain better prices, those prices have been any higher than the ones current among outside competitors.

The data brought out in the Hardwood case point to the conclusion that in the instances where members did obtain better prices, they succeeded in doing so because open price work enabled them to exact the so-called market price, whereas before they had been unable to do so. As previously stated, it is significant that of the numerous letters received by the manager of statistics of the American Hardwood Manufacturers' Association, in commendation of the Open Competition Plan, every letter asserting that the plan had enabled members to get better prices was from a small manufacturer. Testimony reveals that as a class the small producer was unable to command the market price of hardwood lumber because buyers took advantage of his ignorance of market conditions to beat down prices. The following extracts taken from affidavits submitted in the Hardwood Case are illustrative:

"Affiant maintains no sales organization and markets his products largely to wholesalers. * * For this reason the sales reports of the Open Competition Plan were of especial value, for the reason that the wholesalers, from the nature of their business, are constantly in touch with the market, and when purchasing naturally desire to buy at as low a figure as possible. These sales reports were a check against their statements. By virtue of these reports, he was enabled to get nearer the market price from the wholesalers. * * Before introduction of the Open Competition Plan, certain unscrupulous middlemen made a practise of misrepresenting the prices at which they had purchased lumber from neighboring producers, and thereby forced the small producer to make an abnormally low price. This practise has been done away with by the Open Competition Plan. In the opinion of affiant, this is one of the chief benefits derived from the Open Competition Plan, especially as to the small producers, who are not in touch with the market."²⁶

²⁶Affidavit of J. M. Morgan, quoted in Argument of L. C. Boyle before the U. S. Supreme Court, *American Column & Lumber Co. vs. U. S.*, p. 70.

Another small operator attested to the following:

"As an operator of a comparatively small mill, which maintains no sales force, he found these reports and letters of great value to him. Previously to belonging to the Association he was largely at the mercy of the wholesaler, to whom he has always sold the bulk of his production. For instance, in 1919 his concern sold 3,331,000 feet to wholesalers and 1,733,000 feet to consumers. Before joining this association and receiving these reports, in June of 1919, he sold first and second quartered white oak to wholesalers for \$88.00 per thousand at the mill, or \$105.00 per thousand in Boston. For which these wholesalers obtained from the consumers the prevailing price of \$250.00 per thousand. This condition of ignorance of market conditions worked a hardship on him and was of no benefit whatever to the consuming public, the wholesaler reaping all the profit on the transaction.

"That a small producing mill without a sales organization cannot, under present conditions, intelligently do business unless through some association or other means that keeps him in touch with market conditions. In his opinion, the Open Competition Plan has been of great benefit to the small producing mills and has worked no hardship whatever on the consuming public, but has resulted in reducing to a considerable extent the abnormal profits obtained by the wholesalers and middlemen generally."²⁷

One small operator wrote to the manager of statistics:

"From my experience as a small manufacturer, this (sales report) is one of the most important services the Association has given me. Before becoming a member of the Open Competition Plan, I know I have sold a good many cars of lumber \$3.00 or \$4.00 under the market to wholesalers, upon which they have reaped the benefit of my ignorance."²⁸

The testimony here given is typical of many other sworn statements submitted by small manufacturers—all of which point to the conclusion that the chief financial benefit accrued to the small

²⁷Affidavit of J. W. Bailey, quoted in *Argument of L. C. Boyle before the U. S. Supreme Court, American Column & Lumber Co. vs. U. S.*, p. 44.

²⁸Bohlson, H. G., *Record, American Column & Lumber Co. vs. U. S.*, Vol. II, No. 1138.

manufacturer, participation in open price work enabling him to exact prices nearer to the general run of the market. The prices received by the larger producers were no higher than those received by competitors who were not members of the Open Competition Plan. As previously stated, numerous buyers attested to this fact.²⁹

Incidentally it may be remarked that in so far as open price work does enable some producers to obtain prices which approximate more closely the so-called market level, to that extent prices become more uniform than they would otherwise be.

Respecting the influence of open price activity on prices, the following summing up is made by way of recapitulation:

1. Altho theoretically members of open price associations can take advantage of their superior knowledge of market conditions to exact higher prices from the buyer than would be possible if the latter were equally well informed or open price work were non-existent, yet in practise, it is thought that in most industries, at least of the larger type, buyers suffer no such disadvantage, for the reasons, first, that the effectiveness of open price associations is compromised by defections in the open price system itself and by slackness in its manner of use by members; second, that the sphere of influence of open price educational activity is in most cases too limited to overcome the influence exerted on prices by (1) outside competitors, (2) potential competition from substitutes or new capital.

2. Altho open price work probably has not operated to raise the general run of market prices extant in the industry as a whole, in certain individual instances better prices have been obtained, these inuring in the main to the smaller producers, who, prior to their entry into open price work, were seldom able to exact prices recognized to be the current market rates, but found themselves more able to do so in consequence of the better acquaintance with market conditions derived from membership in the open price plan.

3. Rates are not likely to attain any degree of uniformity (except in so far as the higher prices obtained by low priced competitors through participation in open price work contributes

²⁹See p. 147.

toward such uniformity), unless members exercise a controlling influence over the industry, in which case uniformity may be attained, not through more free competition ensuing from a competitive situation in which both buyers and sellers are conscious of all influences affecting demand and supply and therefore awake to their interests, as is held in contemplation by the law of supply and demand, but through the very ignorance of buyers, resulting in docile acceptance of a rate made more or less uniform, if not by direct agreement among members, perchance by the power of suggestion, emanating from leaders, perhaps in the form of precept or example.

CHAPTER X

OPEN PRICE ASSOCIATIONS AND THE PUBLIC WELFARE

In estimating the value of the open price association, the all-important question is, what influence does its operation have on public welfare? Is it likely to prove a detriment or a benefit? When one reflects that the open price movement is but in its infancy, and that therefore the fund of experience and data is necessarily incomplete, it seems indiscreet, indeed, to make a positive assertion one way or the other. Despite the inconclusive character of data based on observation and experience, perhaps a consideration of such of the theoretical aspects of the problem as suggest themselves will be helpful in seeking out a solution.

On the assumption that competition in business is the condition of trade most conducive to public welfare, does open price activity give promise of ushering in a regime more akin to the ideal kind of competition held in contemplation by the law of supply and demand, or is it likely to place obstacles in the path of an approach to more free competition? Mr. Eddy evidently thought that in creating the open price system, he was giving the commercial world an instrument calculated to bring about a new competitive regime wherein the much sought after stability of business conditions would be achieved through intelligent competition replacing ignorant and secret competition. The conception underlying his plan, to-wit, that knowledge is the essence of competition, Mr. Eddy undoubtedly believed to be an original contribution to economic thought, whereas the truth of the matter is that economists in their formulation of the law of supply and demand, have hypothecated their law of competition upon the very assumption that buyers and sellers possess enough knowledge of the factors influencing the competitive situation to make them conscious of their own interests as bargainers. Not only is the

concept, that knowledge is the essence of competition not original with Mr. Eddy but his statement that true competition will ensue "only where there are two or more competitors¹ competing under conditions that enable each to know and fairly judge what the others are doing" is untenable for the law of supply and demand assumes that all parties to a competitive situation are well enough informed to be capable of acting in accordance with their interests. "All parties" include the buying class as well as the selling class. Obviously, any concept of competition which leaves out of consideration the buying class is utterly inadequate as a solution to the problem of achieving true competition. The acceptance of Mr. Eddy's point of view would mean an endorsement of the idea that a nearer approach to ideal competitive conditions will ensue if the salient facts of competition are made known to sellers, leaving buyers to continue in a state of comparative ignorance. The mere statement of this proposition convinces one of its fallaciousness. Obviously buyers cannot hold their own in their capacity of bargainers if sellers are well informed and they are not. Inasmuch as the open price plan as devised by Mr. Eddy embodies this fallacious concept and is heralded by him as a practical scheme for ushering in true competition, it also must share the same criticism. Neither the open price plan nor the concept upon which it is founded give promise of solving the problem of achieving true competition. The plan is devised from the point of view of the seller, the purchaser having no part to play in its organization. All that can be claimed for it is that it gives promise of offering some redress to one industrial class, namely sellers, particularly sellers who are manufacturers.

Prior to their entry into open price work, manufacturers were no doubt the chief sufferers from the ills attending the regime of competition conducted in ignorance and secrecy. Buyers were at least always able to ascertain with some degree of accuracy the character of current market rates by calling for numerous competitive bids, but manufacturers had to rely for their information either upon the statements of buyers or upon those of

¹Mr. Eddy uses the term "competitors" in its commonly accepted meaning of denoting sellers in competition with each other for the custom of the buyers.

salesmen. The small manufacturer without a sales organization had practically no other source of information than that coming from the buyer. Both buyer and salesman have been interested in deceiving the manufacturer into thinking that going rates are lower than they really are. The buyer has practised deception in order to "beat down" prices; the salesman in order to excuse his action in making easy sales at abnormally low prices, his false plea being that certain alleged low quotations made by competitors have had to be met.

Having once associated themselves in open price work, however, the mastery of the competitive situation falls to the sellers—at least in theory, for they have now come into possession of market knowledge which is superior to that of buyers. In practise, however, sellers thus organized find it difficult, if not impossible, to make capital out of their superior educational facilities, either because the open price system fails to function properly, or because members do not represent a sufficient percentage of the productive capacity of the industry to give them a controlling influence over price matters, or because potential and indirect competition keep prices close to pre-existing levels. How powerful these deterring influences are can only be determined from observation and experience carried on over a period of years. The instances on record where individual members have succeeded in bettering their prices, seem confined to small producers, who, prior to their entry into open price work, were unable to exact the best market prices but who subsequently succeeded in utilizing open price information to obtain for themselves better prices.

It is not probable that the public welfare is prejudiced by the fact that small producers, by availing themselves of market information put at their disposal, are enabled to exact rates more nearly approximating those recognized as the current rates. In fact, it is probably nearer the truth to assert that the public welfare is promoted thereby. The public suffers a large loss of specialized capital and labor skill every year by reason of the numerous bankruptcies that occur among small producers. These bankruptcies are not always brought on by the inability to produce as efficiently as larger competitors, but, as often as not,

they are the consequence of a failure to properly gauge market conditions. With adequate market information at their disposal they are less apt to make the mistakes which so often lead to bankruptcy. Another important consideration is that, in so far as prices of small producers are placed on a more even keel with those of the larger competitors, the danger of monopoly ensuing in consequence of ruinous price cutting is materially decreased. Those who are in favor of the survival of the small business institution may find considerable comfort in the thought that open price work makes the small business man better able to hold his own with his larger and more powerful competitors.

The chief danger of jeopardizing the public interest comes when an open price association enjoys a controlling influence in the industry with which it is identified. It is under such a circumstance that attempts to enhance prices directly, or indirectly through curtailment of production, carry the best prospects for successful accomplishment. Success or failure in enhancing prices probably would depend mainly upon the effectiveness of the restraining influence exerted by potential and indirect competition. It is conceivable that a considerable margin of increased profit might be secured, if not permanently, at least for extended periods of time, before new capital would be attracted into the industry or a resort made to the use of substitutes. These enhanced prices might ensue solely as the result of the advantage enjoyed by members over buyers in the way of superior knowledge of market conditions, no resort to collusion being made; however, the temptation to pool knowledge in such a way as to accomplish price enhancement by means of collusion would be exceedingly strong, as is admitted by the staunchest defenders of the open price plan, the inducement being especially great by reason of the fact that members would be aware of their controlling influence in the industry. Collusion might be achieved in a manner so subtle as to defy all detection by officers of the law.

As far as the writer's observation goes, no open price association has as yet succeeded in obtaining a controlling influence in any of the important industries. A few instances are known where small industries are completely within the control of an

open price association, but it is thought that no large industry is sufficiently dominated by any open price association to give one ground for believing that the course of prices for the industry as a whole has been materially affected by its operations. The obstacles that militate against the rapid growth of membership in these associations are sufficiently serious to make one wonder if they ever can succeed in gaining a controlling influence in the larger industries. The open price movement, however, is very young. The future may tell a different story.

To summarize, then, the leading thoughts which suggest themselves with reference to the value of open price associations as viewed from the standpoint of public welfare, we find, first, that they give no promise of solving the problem of achieving true competition, as is maintained by Mr. Eddy and his followers; second, that they do offer some promise of redress from the evils attendant upon the old competitive regime of secrecy and competition, not for buyers, but for sellers, particularly those of small productive capacity; that in the event of a future increase in control and influence over industry, they may wield a power detrimental to the public interest.

Assuming that future observation and experience verify these conclusions, what deductions may be made regarding the proper destiny of open price work? One consideration is paramount: irrespective of whether it is found feasible or not to permit associations of business men to engage in open price work, the work itself must not be abandoned. The information side of business is rapidly becoming an exact science. The trend of the times is in the direction of greater insistence upon the accumulation of precise and accurate business information of a statistical character. A mere statement that business is good or business is dull will not for long be accepted as a sufficient criterion of the trend of business conditions. Manufacturers as a class will not be long in insisting on having at their finger tips actual figures for the industry showing, for instance, the increase or decrease in production from a known standard; the increase or decrease in unfilled orders, and the increase in raw materials and finished product on hand—all this in order that they may have an index to the volume of trade. Among other things, manufacturers are

coming to learn that in order to avoid to the greatest practicable extent the periodic disturbances to production that come from unrestrained overexpansion, now recognized to be largely due to a general lack of broad insight into business conditions, they must possess themselves of information of the character expounded above.

It behooves the Government to come to a full recognition of the fact that it is a mistaken public policy, and is also utterly futile, for it to attempt the task of forcing business men to compete in ignorance and secrecy. Our hope for improving competitive conditions lies, not in forcing business men to conduct their businesses like moles, but in giving them all the enlightenment possible as to the factors that influence the competitive situation. The open price movement has sprung into existence in response to the growing desire of business men to govern their business operations intelligently in the light of existing business conditions. They have tried to do for themselves what the Government does in a small way for the farmers. At great expense to itself, the Government issues crop reports to the farmers for the express purpose of enabling them to market their products more intelligently. Since it is clear that an approach to more wholesome competitive conditions must come through the wider dissemination of more exact knowledge of the factors influencing business conditions, it seems ill-advised and even unfair to force associations whose efforts are dedicated to these purposes to cease their activity on the ground that prices happen to be increased thereby—unless the Government is prepared to assume the responsibility for seeing that open price work of equally efficient character is carried on by some other less objectionable agency, either private or public. To put a ban on open price activities without offering something in their stead would be to discourage a valuable incentive directed toward the achievement of greater efficiency in bargaining. The greater the development of efficiency in bargaining, the nearer is the approach of actual competitive conditions to ideal competitive conditions.

If future observation and experience point to the conclusion that members of open price associations are securing too liberal returns on their investment in business education, at the expense

of buyers' ignorance, the proper solution lies, not necessarily in prohibiting them from engaging in open price activity, but in widening the sphere of open price influence so that not only members of open price associations may receive the benefit of it but also all others who have an interest in the competitive situation. With all bargainers equally well equipped with scientific business information, no group of men associated for the purpose of disseminating information of this character among its membership would be in a position of dominance in any industry, for they no longer would possess a monopoly of such information. If the necessary machinery could be constructed for putting both buyers and sellers in every industry in possession of all information necessary to make them intelligent bargainers, one of the most serious causes of friction of the many that now prevent actual competitive conditions from approaching ideal competitive conditions will have been eliminated. Only then will the much maligned law of supply and demand be afforded a sufficient opportunity to demonstrate its worth before the world.

It is not within the scope of this dissertation to consider the practical aspects involved in extending the sphere of open price activity beyond its present confines. No doubt a proper solution of the problem of extending open price activity into every industry in such a way that all who are interested may profit thereby can best be achieved by a painstaking and exhaustive investigation conducted with facilities for research such as no one individual is likely to possess. Only the Government, it is thought, has command of the facilities necessary to make a successful investigation. The chief question on which such an investigation must seek to come to an intelligent decision is whether the function of collecting, compiling, and disseminating business statistics should be left in the hands of associations of business men in each of the industries, without, however, confining membership to one industrial class as is now the case, but extending it to include the class of purchasers; or whether this function should be turned over to the Government to administer.

The burden of the argument in this study appears to uphold the latter procedure as offering the greater assurance for success,

at least as far as conducting open price work in the larger industries where buyers and sellers are relatively numerous is concerned. Even making allowance for the fact that the open price movement is young, the results achieved in one of the largest industries, the lumber industry, do not hold out much promise for the future. We have seen that even in the most successful association of the many in the lumber industry doing open price work, namely the American Hardwood Manufacturers' Association, it was found well nigh impossible to secure sufficient coöperation from competitors to make the plan successful. Early in 1919, after an existence of about two years as a consolidation of two associations which had existed for several years previous, the membership had not yet reached the four hundred mark; thousands of small mill owners were not members. In 1919 the membership controlled but twenty-eight percent of the total hardwood production of the industry. Membership was comprised mainly of the larger producers. The small mill owners were the very ones most in need of business information, for as a rule they had no sales organizations, and in their isolated locations, they had poor means of keeping in touch with the market. Moreover, even a large percentage of those who did become members showed themselves very dilatory in furnishing the information called for by the manager of statistics. Obviously, under these circumstances, such statistics as were reported by members did not give totals which could be considered representative of the hardwood industry as a whole. It is quite conceivable, not to say probable, that an investigation into the workings of open price associations in the other large industries where they are now in operation, would reveal conditions similar to those found in the lumber industry. The writer is convinced that there will always be a large percentage of business men in every industry who, for one reason or another, will not participate in open price work conducted by a voluntary organization.

In order to obtain statistics sufficiently representative of each industry to be a real index to the trend of business conditions, it would seem necessary to introduce an element of compulsion into the situation, such as only the Government could successfully bring to bear. Business men could be required to furnish

vital business statistics to the Government much in the same manner that it is made compulsory to furnish statistics to the Census Bureau.

One Government agency evidently believes it feasible as well as needful to obtain accurate and precise data pertaining to market conditions in each industry, for the Federal Reserve Board, working through the Federal Reserve Banks, is establishing a reporting system for the purpose of obtaining from representative firms in each of the more important lines of industry certain figures relating to production, stocks, unfilled orders, and the like. Its main purpose in gathering this information is to use it as a basis for making a scientific study of bank credit. However, as an inducement to manufacturers and others to contribute information, those who submit the required reports will be sent the figures that are compiled for their particular lines. The returns received for any given line are to be compiled and published in the form of percentages, giving conditions in the industries as a whole, so as to avoid the possibility of disclosing information relative to any particular firm, presumably of a confidential nature.

Obviously the scope of the work of this Board is limited, and in consequence its effectiveness is impaired, by reason of the fact that data are to be obtained only from those who volunteer their coöperation. Probably there will be a better response to the Board's appeal for coöperation than has been accorded to the average open price association, because the Board carries the expense associated with the compilation and dissemination of statistics, whereas open price associations must require contributors to bear this expense. But, as previously intimated, among a large percentage of those who actually become members of open price associations, thus indicating that they have not demurred at the expense involved, a very serious laxness in reporting has been manifested. The same laxness is likely to be shown by those who report to the Federal Reserve Board.

The greatest assurance of success would seem to be promised by the establishment of one great statistical bureau for the whole country under the direction and control of an agency such as the Department of Commerce, this agency to be empowered to

require manufacturers and others to submit at stated periods reports of prices, production, stocks, costs, and the like, whereupon these reports would be compiled in such a way as to reveal the salient facts of competition without divulging figures of individuals and then disseminated in published form among those interested. Inasmuch as this government statistical bureau would have no authority over industry except to require that reports be submitted at stated intervals, there would be little ground for fearing that the establishment of such a bureau would mean too much Government in industry. Neither would the stock objection raised against government ownership, to wit, that government officials lack the initiative and energy to successfully operate business enterprises, apply here, for the collection, compilation, and dissemination of statistical data, when once successfully launched into operation, would require little more than the establishment of a set routine of procedure. The system established should be such as to insure promptness in the issuance of reports. An open price system utterly fails of its purpose unless reports can be issued with sufficient dispatch to enable recipients to use them as indices of market conditions.

By way of experiment the Department of Commerce might make a beginning in a few of the basic industries where fluctuations in market rates are particularly severe. Probably it would be desirable, first, to make a start in industries from which the Federal Reserve Board is not yet receiving reports, thus avoiding duplication of effort. Ultimately, if the experiment of the Department of Commerce should prove successful, the Federal Reserve Board would no longer find it necessary to gather its own statistics to guide it in its banking policy, but could utilize those available in the Department of Commerce. Since it probably would take a long time for the Government to develop an open price system adequate to serve the needs of the whole country, open price associations might be permitted to function until such time as the success or failure of the Government experiment shall have been definitely ascertained. If the results achieved by the Government should prove successful, open price associations probably would not need to be legislated out of existence; they would no doubt cease the open price phase of their activi-

ties of their own accord, and in all probability would confine themselves to ordinary trade association activities. Even if they should fail to abandon their open price activities, little harm would result, for they would no longer possess a monopoly of business information. In the event that the experiment of the Government should turn out to be a failure, the machinery developed by open price associations would be at hand as a basis for putting into operation some plan looking toward an association of buyers and sellers in each industry, organized for the purpose of gathering, compiling and disseminating vital business statistics among themselves.

APPENDIX

EXHIBIT I

ASSOCIATIONS REPUTED TO BE DOING OPEN PRICE WORK

1. American Hardwood Manufacturers' Association.
2. American Tack Manufacturers' Association.
3. *Architectural Iron and Bronze Manufacturers.
4. Asbestos Brake Lining Association.
5. Asbestos Paper Manufacturers' Association.
6. Asbestos Textile Manufacturers' Association.
7. Associated Metal Lath Manufacturers.
8. Automobile Accessory Dealers' Association.
9. *Bar Iron Institute, National.
10. Beet Sugar Manufacturers' Association.
11. Belt Buckle Society.
12. Blanket Association.
13. *Bolt, Nut and Rivet Institute.
14. Box Manufacturers, National Association of.
15. Boys' Blouse & Shirt Manufacturing Association, National.
16. Brass Manufacturers, National Association of.
17. Brass and Copper Statistical Exchange.
18. *Bridge Builders' and Structural Society.
19. Broom Handle Manufacturers' Association.
20. Builders' Supply Association, National.
21. California White Sugar Pine Manufacturers' Association.
22. Canadian Pulp & Paper Association.
23. Cash Check Manufacturers' Association.
24. Chair Manufacturers, National Association of.
25. Chicago Retail Lumber Dealers' Association.
26. Coal Association, National.
27. *Cold Roll Strip Steel Institute.

*Wherever the asterisk is used it indicates that the association thus designated was organized by Arthur J. Eddy, the founder of the open price movement.

28. Cordage Institute.
29. Cotton Textile Association.
30. Cotton Thread Manufacturers' Exchange.
31. Cut Sole Manufacturers' Association.
32. Drill and Reamer Society.
33. Duck Association.
34. *Eastern Bar Iron Society.
35. Eastern Shook and Wooden Box Manufacturers' Association.
36. Electrical Contractors' Exchange.
37. Electrical Supply Jobbers' Association.
38. Electric Wire Manufacturers' Association.
39. *Explosives, Institute of Makers of.
40. Fine Cotton Goods Exchange.
41. *Finishers of Cotton Fabrics, National Association of.
42. Gas Appliance Manufacturers' National Exchange.
43. Gingham Association.
44. Gold Filled Chain Manufacturers' Exchange.
45. Hack Saw Manufacturers' Association.
46. Hard Yarn Spinners' Association.
47. *Hollow Metal Door Institute.
48. *Hoop Band Strip Steel Association.
49. Indiana Millers' Association.
50. *Institute of Electrical Contractors.
51. *Institute of Lighting Fixture Manufacturers.
52. Institute of Paper Package Manufacturers.
53. *Institute of Tool Manufacturers.
54. Knife Information Bureau.
55. Knit Goods Manufacturers of America.
56. Lamp Standardization Exchange.
57. Lead Institute.
58. Leather Belting Exchange.
59. Lime Manufacturers, National Association of.
60. Linseed Oil Institute, Armstrong Bureau of Related Industries.
61. Lithographers' Coöperative Association.
62. Lithophone Institute.

*Wherever the asterisk is used it indicates that the association thus designated was organized by Arthur J. Eddy, founder of the open price movement.

63. Lumbermen's Statistical Bureau.
64. *Manganese Steel Founders' Society.
65. *Manganese Track Society.
66. Master Dyers' Exchange of New England.
67. Men's Belt Exchange.
68. Meter Manufacturers' Exchange.
69. Michigan Hardwood Manufacturers' Association.
70. Michigan State Millers' Association.
71. Mid-West Credit and Statistical Bureau (Cement).
72. Millers' Exchange, Southwest.
73. Northern Hemlock & Hardwood Manufacturers' Association.
74. Ohio Millers' State Association.
75. Optical Manufacturers' Association.
76. Padlock Manufacturers' Bureau.
77. Pickle Manufacturers' Association.
78. Piano Bench & Stool Manufacturers, National Association of.
79. Pipe Fittings and Valve Exchange.
80. Pressed Metal Association.
81. Pressed Steel Association.
82. Range Boiler Exchange.
83. Rigid Conduit Manufacturers' Association.
84. *Ring Travellers' Society.
85. *Rolling Steel Door Society.
86. *Roofing Manufacturers' Association.
87. Sales Book Manufacturers' Association.
88. Salt Producers' Association.
89. Sewer Pipe Association.
90. Sheet and Tin Plate Manufacturers' National Association.
91. Shoe String Association.
92. Slack Cooperage Industrial Bureau.
93. Society of Manufacturing Confectioners.
94. South Dakota and Southwestern Minnesota Millers' Association.
95. Southeastern Millers' Association.
96. Southern Illinois Millers' Association.
97. Southern Statistical Bureau (Cement).

*Wherever the asterisk is used it indicates that the association thus designated was organized by Arthur J. Eddy, the founder of the open price movement.

98. Stationers' and Manufacturers' National Association.
99. Steel Barrel Manufacturers' Association.
100. *Steel Founders' Society of America.
101. Steel Furniture Manufacturers, National Association of.
102. Steel Locker & Shelving Manufacturers' Exchange.
103. Tanners, National Association of.
104. Tap & Dye Institute.
105. *Tool Steel Society.
106. Tubular Plumbing Goods Exchange.
107. The United States Potash Producers' Association.
108. Waxed Paper Manufacturers' Association.
109. Webbing Products Manufacturers' Exchange.
110. West Coast Lumbermen's Association.
111. Western Paving Brick Association.
112. Western Petroleum Refiners' Association.
113. Western Pine Manufacturers' Association.
114. Western Red Cedarmen's Association.
115. *Window Shade Manufacturers.
116. *Wire Fence Manufacturers' Association.
117. Woolen Goods Exchange.

*Wherever the asterisk is used it indicates that the association thus designated was organized by Arthur J. Eddy, the founder of the open price movement.

EXHIBIT II

MINUTES OF THE MEETING OF THE MEMBERS OF THE OPEN COMPETITION PLAN OF THE AMERICAN HARDWOOD MANUFACTURERS' ASSOCIATION, HELD AT THE GRUNEWALD HOTEL, NEW ORLEANS, LA., FEBRUARY 24TH, 1919.

Mr. F. L. Adams acted as Chairman, in the absence of Mr. J. B. Robinson.

The composite market report was distributed, and a discussion of market conditions followed.

Mr. Sparks said that he found the market in better shape than it was thirty days ago.

Mr. Ryan said that he believed the Southern Manufacturers were light on stocks. That he had taken up with the U. S. Bureau at Houston the question of furnishing labor. The reply that he received indicated that there was plenty of labor. They failed to furnish any, however, and upon writing them they again replied that there was plenty of labor, but that it would not leave the cities. Believed that labor conditions were getting to be a serious problem.

Mr. Deutch said he found many wholesalers buying up stocks with the view of taking advantage of the better prices bound to come, and because they expect stocks to be hard to get in the near future. When the ocean rates become stable there will be a stampede of buying for the foreign market, as Europe was in need of large stocks, and everything that is dry will be moved. He believed that when this occurred prices would be better than before.

Mr. Brewer stated that it looked as if the wholesalers had taken on a lot of business at any old price and cleaned up the small manufacturers of their stocks. He had found his inquiries to have increased heavily during the past week.

Mr. Bohlssen said he found that the Texas box manufacturers were buying heavily and offering \$20.00 at the mill.

Mr. Smith said that it looked as if No. 3 Oak was going to be a bad seller.

Mr. Cleveland, who had just made a swing around the buying circle, said that he found manufacturers well stocked and most

of them hampered because of the failure of the Government to effect settlements on contracts. He looked for a heavy demand for No. 2 Gum. Stated he was holding Sap Gum for \$37.00 at mill.

Mr. Adams stated that his mill had been shut down since last November because of weather conditions, and had a little over two million feet of stocks on hand. He said that Louisiana had experienced a thirty inch rainfall in ninety days, and of course there was no production.

Mr. L. C. Cornelius, of St. Louis, who was present, said he found furniture factories buying better. He was asking \$50.00 for his Ash, but manufacturers were quoting \$45.00 to \$47.00. Believed there would be a better demand for Red Gum. The demand for box material was off. This was due to packers' production being reduced as a result of the Armistice. Looked for an average price on No. 1 and No. 2 Gum, and better prices on F. a.s. Sap. Ash stocks very low.

Mr. Stanford said he had more timber orders on hand at satisfactory prices than his mill could produce.

Mr. Patterson said that his commissary man reported prices coming down but the consumer could not find the reduction when he paid his monthly bills. Said that returned colored soldiers were bent more on trouble than work.

Mr. Geissler stated that he believed the Association method of advertising might better be carried out by a campaign to educate the public to the fact that lumber was the cheapest of all building materials and that it had at no time advanced as had other commodities. He did not believe that the public needed education as to the uses of hardwoods, but that they did need to be educated to the fact that hardwood prices had advanced hardly any beyond the cost of production.

Mr. Geissler stated that he did not believe that those present realized the exaggerated idea of the public as to the prices that manufacturers were obtaining and the profits they were making. Believed if public were educated to the fact that mills were compelled to close down because they could make no profit on the present price basis it would be a good thing.

Mr. Gadd then related the movement on foot at Washington

to plan the return of industry to normal conditions, and read statements by Secretary Redfield relating thereto.

Mr. Ryan thought the Government ought to cut the strings and get out of the price fixing business.

There followed a discussion as to the value of Oak and Gum Stumpage.

There being no further business, the meeting adjourned.

Secretary.

Chairman.

EXHIBIT III

CONSTITUTION

ARTICLE I

NAME

This organization shall be known as * * * *¹

ARTICLE II

OBJECTS

The purpose of this Institute shall be:

1. The stimulation of acquaintance, confidence and cordial relations amongst its members and throughout the trade.

2. The improvement of the * * * * manufacturing business by striving toward the correction by all proper and legitimate means, of *unintelligences, faulty standardization and abuses in the trade*, and the *promotion of publicity in the transaction of business*.

3. The development of methods for the removal of false impressions and in their place to disseminate correct information and to collect and distribute accurate statistics regarding the entire industry.

4. To devise a scientific system of cost accounting, *suitable for the industry*, to the end that each manufacturer engaged in the industry may accurately know the cost of his output. In *this connection it is not the purpose of the Institute to impose upon any member any cost items or to use, in any manner, the cost system as a means for controlling prices*.

5. The encouragement of the true spirit of "*coöperative competition*" by *bringing out into the open*, all competitive conditions and introducing the open price policy.

6. To coöperate along the lines of metallurgical research in the securing of better steels for use in manufacturing * * * * so that the result would be to raise the standard of quality to its highest point of efficiency, thereby making a great saving to the consumer.

Further to coöperate in the standardization of sizes, dimensions and tolerances of the product manufactured by the Institute.

¹The writer has been requested not to reveal the identity of this association.

To avoid the use of the Institute as a price fixing or trade controlling device;—to this end, no information will be received, distributed or exchanged relative to actual selling prices previous to the making of an actual and bona fide quotation or bid, or effecting an actual sale,—or relative to any customers with whom or territory in which the members intend to do business, and no member shall enter into any agreement, direct or indirect, with any other member that has to do with any prohibited practises, or any other arrangement that will interfere with free, open and active competition among members or with any other person. All information received and distributed shall be absolutely accurate.

8. To coöperate with the Federal Trade Commission to expose and suppress unfair methods of competition.

9. To eliminate secrecy either as to the meetings or operations of the Institute. All its proceedings shall be reduced to writing and carefully preserved.

ARTICLE III

MEMBERSHIP

Section 1. Any individual, firm or corporation, engaged in the commercial manufacture and sale of * * * * * shall be eligible for membership in the Institute.

Section 2. All who have become members before July 1st, 1920, shall be charter members. Thereafter applicants for membership will require for election the affirmative vote of three-fourths of the members present at any regular meeting.

Section 3. All memberships are for full periods of a year and are automatically renewed from year to year unless thirty days prior to the termination of a full year of membership a member shall give notice of his resignation in writing. A member may resign from the Institute at any time during his year of membership on thirty days' notice of his desire so to do, but no resignation shall be accepted until the members resigning shall have completed the payment of all dues for his then full current year.

ARTICLE IV

OFFICERS

Section 1. The officers of the Institute shall be a President, a Vice President and a Secretary-Treasurer.

Section 2. All officers shall be elected at the annual meeting and shall hold office for one year or until their successors have been duly elected .

Section 3. The Executive Committee shall consist of the President, Vice President and three other members to be elected at the annual meeting.

ARTICLE V

MEETINGS

Section 1. The Institute shall hold its regular annual meetings on the same day as its regular monthly meeting in the month of April of each year; the first of such annual meetings to be held the year next following the meeting for organization of the Institute. The annual meeting shall be held at such place as shall be determined by vote of the members.

Section 2. The regular monthly meeting of the Institute shall be held at such convenient hour of the Thursday immediately preceding the second Friday, of each month and at such place as shall be designated by the Executive Committee. Special meetings of the Institute may be called by the President, or on request of three members to the President, but such call shall state the purpose of the meeting and no other business shall be transacted at the special meeting except as is announced in the notice. Notices of all meetings of the Institute shall be mailed to members ten (10) days before the day of meeting.

Section 3. A quorum of all regular and special meetings of the Institute shall consist of a majority of its members.

ARTICLE VI

MEMBERSHIP FEES AND DUES

There shall be two distinct funds, (a) *Membership Fund*, (b) *Principal Fund*.

The Membership Fund shall be provided by the payment of a membership fee of One Hundred Dollars by each member, and this fund shall be maintained thereafter by special, equal assessments, when necessary, such special assessments to be ordered at any regular meeting of the Institute by a majority vote of all members present.

The Membership Fund shall be within the custody of the

Secretary-Treasurer, but shall only be used on warrants drawn against this Membership Fund by the Secretary-Treasurer and countersigned by the President to cover the extraordinary expenses of the Institute such as luncheons or other entertainment expense, traveling expenses of the Secretary-Treasurer, postage and printing expense on all materials mailed to the general public or the trade, other than members, upon the instructions of the Institute, and all printed matter, etc., furnished to the members for their convenience in reporting, etc. The expenditures under this fund shall be directly and entirely within the control of the Institute or its Executive Committee.

The Secretary-Treasurer shall keep an accurate record of all items of disbursements of the Membership Fund, and be prepared at all times to exhibit vouchers for such disbursements.

The Principal Fund shall be provided through the payment by each member of monthly dues, payable on the first day of each month. The amount of dues to be paid by each member shall be in approximate relation to his annual volume of sales; and be pro rated on a basis fixed by the Executive Committee.

The Principal Fund shall be paid directly by the members to the Secretary-Treasurer, and such payments shall constitute the entire Principal Fund, and shall be used by the Secretary-Treasurer to cover all expenses of the maintenance of the Institute, such as clerk hire, office rent, office equipment, telephone and telegraph charges, printing, postage, expressage and the compensation of the Secretary-Treasurer; in fact, every expense incidental to the conduct of the Institute, except such items as are specifically covered by the Membership Fund.

ARTICLE VII

AMENDMENTS TO THE CONSTITUTION

These Articles may be amended by a two-thirds vote of the members present at any regular or special meeting provided notice of such amendment shall be forwarded to each member ten (10) days in advance.

* * * * *

BY-LAWS

Section I. PRESIDENT AND VICE PRESIDENT—The President

shall perform the usual duties of the chief executive officer of such organization, and, in the event of his absence, the Vice President shall act in his stead.

Section 2. SECRETARY-TREASURER—The Secretary-Treasurer *shall be the only paid officer and shall be from outside of the trade.*

It shall be the duty of the Secretary-Treasurer:

(a) To take care of the finances and funds of the Institute in accordance with the provisions hereinafter set forth.

(b) To provide and operate a regulated central office for the proper care of the business of the Institute.

(c) To keep in close personal touch with all members at meetings and by personal visits.

(d) To conduct the correspondence between the Institute and its members and serve as a bond between the concerns in the trade, whether members of the Institute or not.

(e) To maintain and increase the membership of the Institute.

(f) To serve as a clearing house between the members for the exchange of credit information with the object of reducing losses.

(g) To attend all meetings of the Institute and keep accurate stenographic records thereof.

(h) Under the instructions of the Executive Committee to develop and distribute information and statistics of educational value relating to costs of production, selling markets, trade and labor conditions.

Section 3. EXECUTIVE COMMITTEE—The Executive Committee shall manage all of the affairs of the Institute and shall have absolute powers to perform any and all acts in furtherance of the purposes of this Institute, as set forth herein. The Executive Committee shall meet at the call of the President or at the request of any two members on five days' notice, and three of such committee shall be a quorum.

Section 4. VOTING POWER—At all meetings each member shall have but one vote, but may be represented by two or more persons.

Section 5. DROPPING OF MEMBERS—By a two-thirds vote of the members present at any meeting, a member, provided he

has been given a ten days' notice of the proposed action and an opportunity to be heard, *may be dropped for failure to pay any assessments*, within thirty days after same are made or *for filing false or misleading information*.

Section 6. REGULAR COMMITTEE—Standing Committees may be appointed by the Executive Committee subject to the approval of the Institute.

Section 7. ORDER OF BUSINESS—The Order of business shall be as follows:

- (1) Calling of Roll
- (2) Reading of minutes of previous meeting
- (3) Election of New Members
- (4) Reports of Officers
- (5) Reports of Committees
- (6) Communications
- (7) Unfinished Business
- (8) New Business
- (9) Reports of Members on Conditions affecting the Industry.

Section 8. GOVERNANCE OF MEETINGS—Roberts' Rules shall govern at all meetings.

Section 9. AMENDMENTS TO BY-LAWS—These By-Laws may be amended by a two-thirds vote of the members present at any regular or special meeting provided notice of such amendment shall be forwarded to each member ten days in advance.

* * * * *

We, the undersigned, endorse the purposes and subscribe to the Constitution and By-Laws of the * * * * * Institute.

Upon notification from the * * * * * we will pay to the Secretary-Treasurer of the Institute a membership fee of One Hundred Dollars and monthly dues thereafter as fixed by the Executive Committee.

Name.....Address.....

By.....

Name.....

By.....

EXHIBIT IV

MEMBERS REPORTING FORM

Name of Member.....
 Date Reported.....Prices Effective.....
 Remarks:.....

N. B.—Where "Box" quotations are made quote "Count Goods" except where weight is stated.

Classification	Style	Package	Memo.	Wt.	Count	No. to Lb.	Price
BUTTER CREAMS	Large.....	Pails.....					
	Large.....	Boxes.....					
	Mixtures, Small.....	Pails.....					
	Mixtures, Small.....	Boxes.....					
	Corn, Small.....	Pails.....					
	Corn, Small.....	Boxes.....					
CARMELS	Chocolate Dipped.....	Pails.....	Pockets				
	Machine or Enrober.....	Pails.....	Layers.....				
	Cheapest Wrapt.....	Cases.....		50			
	Cheapest Wrapt.....	Cases.....		45			
	Cheapest Wrapt.....	Pails.....		25			
	Cheapest Wrapt.....	Pails.....					
	Cheapest Wrapt.....	Boxes.....					
	Cheapest Wrapt.....	Boxes.....					
	Whipped Cream, Wrapt.....	Pails.....					
	Whipped Cream, Wrapt.....	Cases.....					
	Whipped Cream, Wrapt.....	Boxes.....					
	Butterscotch.....	Pails.....					
	Butterscotch.....	Cases.....					
	Butterscotch.....	Cases.....					
	Butterscotch.....	Boxes.....					
COCOANUT WORK	Bonbons No. 1.....	Pails.....					
	Bonbons, No. 2.....	Pails.....					
	Caramels, Pure Crystallized.....	Pails.....					
	Cheapest Caramels, Crystallized.....	Pails.....					
	Tea Biscuits.....	Boxes.....					
	Macaroons.....	Boxes.....					
	Caramels.....	Boxes.....					
	Jap.....	Boxes.....					
CHOCOLATES Machine Dipped	Chocolate Drops.....	Pails.....					
	Chocolate Drops.....	Pails.....					
	Chocolate Drops.....	Pails.....					
	Chocolate Chips.....	Pails.....					
	Solid.....	Boxes.....					
	Chocolate Chips.....	Pails.....					
	Honey comb.....	Boxes.....					
	Nougats.....						
	Peanuts.....						
	Almonds.....						
CREAM BONBONS Crystallized	Plain.....	Pails.....					
	Fancy.....	Pails.....					
		Pails.....					
CREAM WAFERS.....							
CREAM AND GUM MIXED—Crystallized	Large.....	Pails.....					
	Small.....	Pails.....					
50% Gum Work 50% Cream Work GUM WORK	A. B. Crystallized.....	Pails.....					
	Sugar Crystallized.....	Pails.....					
	A. B. Sugar Rolled.....	Bbbs.....					
	Soft Sugar Rolled.....	Bbbs.....					
	Spiced Drops and Strings.....	Boxes.....					
	Licorice Drops.....	Boxes.....					

NOTE: The complete form is comprised of three sheets.

DAILY SALES REPORT

No. 192....

Quantity Ordered Feet	DESCRIPTION (Give full particulars, using as much space as necessary)	DELIVERY		Time of Shipment	PRICE	
		Rail Rate Over Nik.	Point Water		Wholesale Less 5%	Direct Net

EXHIBIT VI

AMERICAN HARDWOOD MANUFACTURER'S ASSOCIATION

OPEN COMPETITION PLAN

SALES REPORT

Vol. 2. No. 54 Executive Office, Bank of Commerce & Trust Co. Bldg., Memphis,
Tenn. Week Ending January 31, 1920

ACTUAL SALES OF HARDWOOD

As reported by members of the Open Competition Plan for week ending January 31,
1920

SOUTHERN TERRITORY

GUM

FIRSTS AND SECONDS QUARTERED RED GUM FIGURED WOOD

SOLD BY	Date of Sale	Feet	Thickness	Destination or Territory	Delivered Price Sold to Customer	Which is Equivalent at Cairo to	Current Av. of Sales at Cairo
*151 Sondheimer	1/26	15,000	4/4"	Pacific Coast	232.00	211.00	211.00

NO. 1. COMMON AND BETTER QUARTERED RED GUM FIGURED WOOD

* 59 New Deemer	1/28	15,000	4/4"	Mississippi	203.50 178.50	206.75 181.75
-----------------	------	--------	------	-------------	------------------	------------------	----------------

FIRSTS AND SECONDS QUARTERED RED GUM

*159 H. Ridge	1/28	75,000	4/4"	Elmira Ty	215.00	207.75	200.25
150 Alex. Bros.	1/15	15,000	4/4"	Cincinnati	188.50	186.25	.....
71 Kraetzer	1/29	(1)15,000	4/4"	Virginia	211.00	207.00	.....

		105,000					
* 32 Pritch-Wh.	1/26	8,000	5/4"	Kansas	190.00	186.75	186.75
* 67 Faust	1/26	4,000	6/4-8/4"	Mississippi	210.00	213.00	.....
*159 H. Ridge	1/28	37,500	8/4"	Elmira Ty	245.00	237.00	237.00
(1) Kraetzer-Cured, Selects at 191.00							

NO. 1 COMMON AND BETTER QUARTERED RED GUM

* 44 Rush	1/23	15,000	8/4"	North Carolina	240.00	233.00	.....
					220.00	213.00	.....
321 Lamb-Gary	1/24	7 500	8/4"	Huntington, W. Va.	211.00	206.75	.....
					181.00	176.75	.....
*240 Bellgrade	1/23	13,000	8/4"	North Carolina	245.00	239.00	.....
					225.00	229.00	.....

35,500

NOTE*—Class B—Sales to Consumers. Actual destination not reported. Export Sales Reported on Cairo Rate Basis.

NOTE:—This is the first page; the entire report comprises 70 pages.

EXHIBIT VII

D. O.
Page No. 1

12/27/20

WEST COAST LUMBERMEN'S ASSOCIATION SALES REPORTING DEPARTMENT

DAILY MARKET BULLETIN No. 487

DIRECT

	Total Volume M	High Feet M	Price	Low Feet M	Price	Prevailing Feet M	Price
FLOORING							
1x4 No. 2 VG.....	19	10	55.00				
1x4 No. 3 SG.....	8	8	24.00				
1x6 No. 2 and B SG.....	7	7	32.00				
FINISH No. 2 and B							
1x8-10".....	16	1	53.00	15	51.50		
CEILING							
5/8x4 No. 2 and B.....	22	5	28.25	17	28.00	17	28.00
No. 3.....	3	3	20.50				
1x4 No. 3.....	11	11	24.00				
DROP SIDING							
5/8x6 No. 4.....	6	6	15.00				
1x6 No. 2 and B.....	13	13	31.00				
RUSTIC							
5/8x6 No. 2 and B.....	10	10	32.50				
BATTENS Lin.							
3" Flat.....	11	11	.75				
2 1/2" O. G.....	5	5	.95				
WAGON BOTTOMS Sets							
13/16x38 V. G.....	12	12	3.60				
BOARDS and S/L							
1x4 SIS No. 1.....	3	3	16.00				
1x6.....	6	4	18.50	2	16.50		
Rgh.....	2	2	17.75				
1x8-10".....	42	2	19.50	30	17.50	30	17.50
1x4 and W SIS No. 2.....	8	8	13.50				
DIMENSION S and E							
2x4 12-14 No. 1.....	15	15	15.50				
PLK and SML TBRs							
4x4-6 12/16 S4S.....	6	6	21.50				
3x10-12" 12/16 S4S.....	2	2	23.00				
TIMBERS Under 32'							
6x6/8x10 S4S.....	4	4	26.00				
LATH Fir.....	15	10	4.00	5	3.75		

WHOLESALE

FLOORING							
1x4 No. 1 VG.....	9	9	57.00				
No. 2 VG.....	44	5	54.00	5	49.00		
No. 3 VG.....	10	10	33.00				
1 1/4x4 No. 2 and B VG.....	5	5	55.50				
1x4 No. 2 and B SG.....	15	15	24.00				
STEPPING No. 2 and B							
2.....	2	2	60.00				
FINISH No. 2 and B							
1x8-10".....	6	5	51.00	1	50.00		
CASG and BASE							
2.....	2	2	58.00				
CEILING							
5/8x4 No. 2 and B.....	5	5	26.50				
5/8x4 No. 2 and B.....	5	5	31.00				
No. 3.....	5	5	22.50				
1x6 No. 2 and B.....	5	5	32.50				
DROP SIDING							
1x6 No. 2 and B.....	8	8	31.00				
BOARDS and S/L							
1x4 SIS 13/16 No. 1.....	15	15	15.00				
1x12" SIS 13/16.....	15	15	19.00				
1x6-8" SIS 13/16 No. 3.....	30	30	16.00				
DIMENSION S and E							
2x4 12-14 No. 1.....	13	13	12.00				
PLK and SML TBRs							
4x4 12/16 S4S.....	1	1	16.50				
CEDAR SIDING							
3/4x10 Clr Col.....	60	60	70.00				

NOTE: No specified lengths prices are shown on Bulletin. Total volume for day in Bulletin and detail sales 1, 288,894 Ft.

EXHIBIT VIII

NORTH CAROLINA PINE ASSOCIATION NORFOLK, VIRGINIA WEEKLY REPORT OF ORDERS, SHIPMENTS AND PRODUCTION

No. 102

Norfolk, Va., November 18th, 1920.

For Week ending Saturday, November 13th, 1920.

45 MILLS REPORT:

Orders.....	2,654,968 feet	58,999 feet
Shipments.....	4,976,168 "	110,581 "
Production.....	5,707,723 "	126,838 "
Normal Production.....	12,726,000 "	282,800 "

Orders below Shipments.....	2,321,200 feet = 47%
Orders below Actual Production.....	3,052,755 " = 53%
Shipments below Actual Production.....	731,555 " = 13 ⁰⁷ %
Orders below Normal Production.....	10,071,032 " = 79%
Shipments below Normal Production.....	7,749,832 " = 61%
Actual Production below Normal.....	7,018,277 " = 55%

Increase in Orders compared with
last week..... 823,868 feet = 45%

Increase in Number of Reports from
last week..... 5



PREVIOUS REPORTS

PREVIOUS REPORTS					
Week Ending	No. of Mills	Orders	Shipments	Production	Normal Production
Aug. 21....	40	5,227,500 feet	5,065,181 feet	5,722,051 feet	12,774,000 feet
Aug. 28.....	36	5,264,100 "	5,052,079 "	5,559,528 "	12,954,000 "
Sept. 4.....	41	3,410,600 "	5,838,799 "	6,134,992 "	14,184,000 "
Sept. 11.....	36	2,429,433 "	4,152,631 "	5,809,137 "	13,692,000 "
Sept. 18.....	34	3,603,000 "	4,047,873 "	6,008,703 "	12,498,000 "
Sept. 25.....	46	4,764,348 "	6,556,171 "	7,456,497 "	13,896,000 "
Oct. 2.....	37	4,919,500 "	5,830,971 "	5,636,717 "	12,234,000 "
Oct. 9.....	42	3,190,800 "	4,498,382 "	7,575,162 "	15,174,000 "
Oct. 16.....	39	2,389,900 "	3,202,174 "	5,555,339 "	12,144,000 "
Oct. 23.....	44	3,859,900 "	4,766,883 "	7,026,060 "	14,784,000 "
Oct. 30.....	43	1,854,000 "	4,261,144 "	6,581,118 "	14,112,000 "
Nov. 6.....	40	1,831,100 "	3,778,269 "	5,424,418 "	13,044,000 "
Nov. 13.....	45	2,654,968 "	4,976,168 "	5,707,723 "	12,726,000 "
Total 3 months.....	45,429,149	"	62,026,815	"	174,216,000
Total Year to Date.....	199,458,058	"	254,902,748	"	595,254,000

Barometer indicates percentage of Production, Orders and Shipments above or below Normal Production, which is shown as "Base," or 100%.

The above form of Barometer, originated by the Brookmire Economic Service to picture Fundamental Business and Financial Conditions, is used by this Association with their permission.

EXHIBIT IX

PRODUCTION AND SALES STATISTICS AND REPORT OF SPECIAL QUOTATIONS FOR THE MONTH OF OCTOBER, 1920.

- (a) Percent actual QUANTITY production to Normal.
- (b) Percent actual VALUE production to Normal.
- (c) Percent actual QUANTITY SALES to Normal.
- (d) Percent actual QUANTITY BOOKS SOLD NEW USERS to Total sold.
- (e) Time required to complete unfilled orders and contracts.

Member	(a)	(b)	(c)	(d)	(e)	Special Quotation Filed	Sales Below List
1	149.4	232.4	146.3	.....	6 to 7 wks.		
2	77.4	120.1	52.6	24.4	8 to 9 "		1
4	107.3	165.8	74.1	43.4	8 to 9 "		
5	73.9	113.2	62.6	12.6	5 to 6 "		
6	106.2	158.9	75.5	13.3	1 to 2 "		
7	71.8	116.7	85.1	36.3	3 to 4 "		
8	128.1	138.2	73.2	11.6	10 to 11 "		
11	133.1	199.9	85.7	25.2	2 to 3 "		
13	129.9	194.2	71.3	3.9	11 to 12 "		
14	127.0	142.0	93.4	19.4	11 to 12 "		
Whole Indus- try	105.9	142.4	67.3	17.7	9 to 10 wks.	None	1

(No exchange of information between members.)

MONTHLY COMPARISON OF PRODUCTION AND SALES FOR WHOLE INDUSTRY FOR YEAR ENDING OCTOBER 30, 1920.

Month	(a)	(b)	(c)	(d)	(e)
November, 1919	95.3	105.8	100.4	19.3	7 to 8 Weeks
December, "	104.0	116.4	111.9	20.7	7 to 8 "
January, 1920	100.7	101.9	121.7	20.7	11 to 12 "
February, "	92.0	97.8	99.0	20.8	11 to 12 "
March, "	99.4	113.2	110.2	22.1	12 to 13 "
April, "	56.0	82.2	119.5	17.8	14 to 15 "
May, "	113.7	127.7	100.6	18.1	14 to 15 "
June, "	110.4	130.1	97.3	16.7	13 to 14 "
July, "	107.0	126.9	81.5	15.0	12 to 13 "
August, "	107.1	138.8	74.5	13.8	11 to 12 "
September, "	111.8	150.4	84.1	14.7	10 to 11 "
October, "	105.9	142.4	67.3	17.7	9 to 10 "
Average	100.3	119.5	97.3	18.1	

EXHIBIT X

STOCK REPORT, JANUARY 1ST, 1920

As reported by the members of the

AMERICAN HARDWOOD MANUFACTURER'S ASSOCIATION

MEMPHIS, TENNESSEE

Note—The oversold column shows that some of the members are oversold on these various items. The "Unsold January 1st" column shows that some of the members have these various amounts unsold.

FIGURES DENOTE THOUSANDS

GUM

FIRST AND SECONDS QUARTERED RED GUM FIGURED WOOD

Thickness-Width	Jan. 1 Dry	Jan. 1 Green	Jan. 1 Total	Jan. 1 Sold	Jan. 1 Oversold	Jan. 1 Unsold	Dec. 1 Unsold	Stock Increase	Stock Decrease
1".....	90	38	128	28	9	109	35	74	...
1 1/4".....	12	10	22	3	3	22	15	7	...
1 1/2".....	4	...	4	3	3	4	...	4	...
2".....	41	...	41	13	3	31	26	5	...
2 1/2".....	12	...	12	...	...	12	12	...	...
3".....	3	...	3	...	...	3	3	...	...
Total.....	162	48	210	47	18	181	91	90	...

NO. 1 COMMON AND SELECTS QUARTERED RED GUM FIGURED WOOD

1".....	73	10	83	33	...	50	41	9	...
1 1/4".....	21	...	21	...	...	21	9	12	...
1 1/2".....	10	...	10	...	...	10	12	...	2
2".....	18	...	18	11	11	18	8	10	...
Total.....	122	10	132	44	11	99	70	31	2

FIRST AND SECONDS PLAIN RED GUM FIGURED WOOD

5/8".....	...	...	...	...	...	...	2	...	2
1".....	100	27	127	...	...	127	129	...	2
1 1/4".....	20	10	30	...	...	30	23	7	...
1 1/2".....	3	...	3	...	...	3	3	...	...
2".....	13	10	23	...	...	23	20	3	...
Total.....	136	47	183	...	...	183	177	10	4

NO. 1 COMMON AND SELECTS PLAIN RED GUM FIGURED WOOD

1".....	176	45	221	2	...	219	154	65	...
1 1/4".....	13	...	13	...	...	13	11	2	...
2".....	1	...	1	...	...	1	3	...	2
Total.....	190	45	235	2	...	233	168	67	2

LOG RUN PLAIN RED GUM FIGURED WOOD

1".....	30	16	46	...	...	46	46	...	...

NOTE: This is the first page; the entire stock report comprises 63 pages.

EXHIBIT XI

DISTRICT TWELVE

OF THE

NATIONAL ASSOCIATION OF BOX MANUFACTURERS.

Report of business conditions for month of 192....
 Unless otherwise stated, answers to questions should be based upon comparison with preceding month.

MARKET CONDITIONS.

1. What is the trend of business as indicated by:

Demand on	Lighter _____	Inquiries on	Lighter _____	Selling	Higher _____
(a) Contracts?	Same _____	(b) New Business?	Same _____	(c) Price?	Same _____
	Heavier _____		Heavier _____		Lower _____

2. Are you in position to take additional business? If so,

(a) How much? _____; (b) What class of boxes? _____

3. List average prices per M feet of all Sales during the month.

Average price per M feet for the month, sales in lots of

Material		50 boxes or less	100 boxes	500 boxes	1,000 boxes
White Pine	Made up				
	Shooks				
Gum and Yellow Pine	Made up				
	Shooks				
Poplar and Cottonwood	Made up				
	Shooks				

RAW MATERIAL

4. (a) Is your lumber stock in yard and purchased { Above Normal? _____
 { Normal? _____
 { Below Normal? _____

(b) For what period are your entire requirements covered by purchases? _____

(c) Are you in the market now and if so, for what material and in what quantity? { _____ M feet _____ Material.
 { _____ M feet _____ Material.
 { _____ M feet _____ Material.

(d) Do you wish to offer any of your lumber stock? If so, note quantity and description. _____
 M feet of _____

5. (a) Is the market on Box Lumber { Lower? _____
 { Same? _____
 { Higher? _____

(b) List all offerings of Box Lumber. _____

Offer made by	Quantity	Description	Price per M	f.o.b. what point

(c) List of all purchases of Box Lumber.

Purchased from	Quantity	Description	Price per M	f.o.b. what point

LABOR

6. Summarize briefly labor situation. _____

GENERAL

7. Note any special questions you desire to have discussed at the next meeting. _____

(Signature) _____

EXHIBIT XII

(Company)

W. D. Burr,
1553 Conway Building,
Chicago, Illinois.

Dear Sir:

Below is a statement of hourly rate of wages paid by this company for the various classes of labor indicated during the month of _____ 1920.

Employee	Hour Rate of Wages Paid
Saw Filer.....	_____ Cents per hour.
Rip Sawyer.....	_____ " " "
Cut-off Sawyer.....	_____ " " "
Planer.....	_____ " " "
Planer Helper.....	_____ " " "
Re-Sawyer.....	_____ " " "
Re-Sawyer Helper.....	_____ " " "
Machine Nailer.....	_____ " " "
Matcher.....	_____ " " "
Matcher Helper.....	_____ " " "
Printer.....	_____ " " "
Common Labor { Factory.....	_____ " " "
(Except Women) { Yard.....	_____ " " "
Women.....	_____ " " "

We are paying at rate of _____ for overtime.

Our factory is now working on a _____ hour per day basis.

Space for additional remarks in explanation of wage figures given.

(Signed) _____

EXHIBIT XIII

NORTH CAROLINA PINE ASSOCIATION

NORFOLK, VA.

Operating Costs, For Month of _____ 192____
(with Analysis)

(Concern or Number)				(Address)										
	Total for the Month				ANALYSIS									
					Labor				Other Expenses					
	Amount			Av. Cost Per M. Ft.	Amount			Av. Cost Per M. Ft.	Amount			Av. Cost Per M. Ft.		
1 Stumpage (Board Measure).....														
2 Logging Expense.....														
3 Log Transportation.....														
4 TOTAL COST OF LOGS AT MILL (Lines 1, 2, and 3.)														
5 Saw Mill.....														
6 Dry Kilns.....														
7 Yarding and Shipping.....														
8 TOTAL COST OF MANUFACTURING (Lines 5, 6, and 7.)														
9 Insurance and Taxes.....														
10 Depreciation.....														
11 General Overhead.....														
12 TOTAL OVERHEAD COST (Lines 9, 10, and 11)														
13 Selling Expense.....														
14 TOTAL COST OF ROUGH LUMBER (Lines 4, 8, 12, and 13)														
15 Planing Mill Cost.....														
16 TOTAL COST OF FINISHED LUMBER (Lines 14 and 15)														

- 17
- 18 TOTAL ROUGH LBR. PRODUCTION (B. M.).....M. FEET. NORMAL RUNNING TIME.....HOURS.
(For the Month)
- 19 TOTAL DRESSED LBR. PRODUCTION (B. M.).....M. FEET. ACTUAL RUNNING TIME.....HOURS.
(For the Month)
- 20 AVERAGE YIELD PER LOG. (B. M.).....FEET. LOST TIME.....HOURS.

Mill Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	18	15	16	19	20		
Stumpage		Logging Expense	Log Transportation	Log Total Cost at Mill	Saw Mill	Dry Kilns	Yarding and Shipping	Total Cost of Manufacturing	Insurance and Taxes	Depreciation	General Overhead	Total Overhead	Selling Expense	Total Cost of Rough Lumber	Per Cent of Total Production	Rough Lumber Production	Carried Forward	Planing Mill	Cost of Dressed Lumber	Dressed Lumber Production	Average Yield Per Log
5	\$8	\$17.22	\$5.91	\$29.15	\$11.19	\$4.69	\$16.88	\$16.29	\$8.58	\$7.11	\$11.88	\$18.07	\$5.95	\$70.16	100.0	4500	717,000	3,107,002	\$5.36	887,687	85
7	\$8	\$14.23	\$10.72	\$24.95	\$12.61	\$4.69	\$16.88	\$16.29	\$8.58	\$7.11	\$11.88	\$18.07	\$5.95	\$70.16	100.0	4500	717,000	3,107,002	\$11.30	712,000	75
0	\$6	\$23.99	\$3.00	\$26.99	\$9.06	\$1.81	\$28.80	\$28.80	\$3.15	\$3.38	\$4.52	\$12.99	\$1.16	\$69.28	98.7	40,000	29,796,582	29,796,582	.....	.....	.....
1	\$6	\$17.76	\$8.93	\$26.69	\$8.37	\$1.78	\$28.15	\$28.15	\$3.02	\$3.25	\$4.52	\$12.99	\$1.16	\$69.28	98.7	40,000	29,796,582	29,796,582	.....	.....	.....
21	\$6	\$17.43	\$11.77	\$29.20	\$6.19	\$4.26	\$16.22	\$16.22	\$1.97	\$2.82	\$2.19	\$6.98	.....	\$54.25	94.2	520,741	28,356,582	28,356,582	3.35	845,520	81
26	\$6	\$11.79	\$3.15	\$14.94	\$6.24	\$1.67	\$3.38	\$3.38	\$1.07	\$3.96	\$3.27	\$10.13	.....	\$52.35	92.4	1,680,000	27,835,841	27,835,841	5.89	58,244	.....
34-a	\$6	\$15.71	\$2.01	\$17.72	\$6.42	\$3.16	\$12.22	\$12.22	\$3.07	\$7.74	\$4.42	\$12.99	.....	\$40.17	86.8	593,772	26,146,841	26,146,841	5.37	54,544	.....
39-a	\$6	\$16.51	\$8.80	\$25.31	\$7.09	\$4.69	\$16.88	\$16.88	\$2.02	\$3.33	\$1.90	\$5.25	.....	\$45.43	84.9	1,631,000	25,553,069	25,553,069	5.39	50,822	.....
20-a	\$6	\$12.21	\$10.24	\$22.45	\$7.19	\$4.69	\$16.88	\$16.88	\$1.99	\$3.63	\$2.85	\$6.03	.....	\$45.43	84.9	1,631,000	25,553,069	25,553,069	5.39	50,822	.....
8-d	\$6	\$8.10	\$12.31	\$20.41	\$5.71	\$1.15	\$3.58	\$3.58	\$1.85	\$1.55	\$2.62	\$6.02	.....	\$43.76	77.3	1,240,477	23,266,069	23,266,069	7.56	51,322	.....
40	\$6	\$11.45	\$8.07	\$19.52	\$7.23	\$1.62	\$3.63	\$3.63	.....	.....	.....	.....	.....	\$43.57	73.1	3,601,000	22,025,592	22,025,592	.....	.....	.....
34-b	\$6	\$12.68	\$4.43	\$17.11	\$7.00	\$1.77	\$3.88	\$3.88	\$2.81	\$1.69	\$2.72	\$5.14	.....	\$42.10	59.8	486,500	17,996,592	17,996,592	5.75	47,944	.....
19	\$6	\$12.51	\$5.90	\$18.41	\$5.14	\$1.54	\$2.82	\$2.82	\$3.13	\$1.84	\$3.57	\$7.54	.....	\$42.10	59.8	486,500	17,996,592	17,996,592	5.75	47,944	.....
23	\$6	\$8.08	\$14.81	\$22.89	\$5.81	\$1.43	\$2.52	\$2.52	\$1.76	.....	\$1.70	\$3.05	.....	\$41.74	58.2	1,297,720	17,510,092	17,510,092	2.18	43,922	.....
22	\$6	\$11.24	\$8.89	\$19.13	\$7.09	\$1.46	\$4.74	\$4.74	.....	.....	.....	.....	.....	\$41.28	53.8	413,334	16,212,372	16,212,372	5.67	46,955	.....
29-a	\$6	\$10.98	\$8.31	\$19.29	\$4.46	\$1.62	\$3.88	\$3.88	\$1.73	\$1.40	\$1.87	\$4.50	.....	\$40.28	52.5	1,000,000	15,729,038	15,729,038	.....	.....	.....
8-b	\$6	\$11.43	\$8.64	\$20.07	\$5.62	\$1.71	\$3.83	\$3.83	\$1.73	\$1.73	\$2.63	\$5.12	.....	\$40.28	52.5	1,000,000	15,729,038	15,729,038	3.48	43,699	.....
15	\$6	\$12.00	\$5.15	\$17.15	\$5.58	\$1.93	\$2.79	\$2.79	\$2.21	\$1.53	\$2.66	\$6.40	.....	\$39.51	45.5	704,000	13,692,235	13,692,235	3.37	42,122	.....
14	\$6	\$13.00	\$3.00	\$16.00	\$5.58	.....	\$2.79	\$2.79	\$2.21	\$1.53	\$2.66	\$6.40	.....	\$39.51	45.5	704,000	13,692,235	13,692,235	5.02	43,377	.....
8-c	\$6	\$10.12	\$6.85	\$16.97	\$4.28	\$1.57	\$3.85	\$3.85	\$1.91	\$1.30	\$2.62	\$5.83	.....	\$37.45	39.8	1,419,732	11,998,235	11,998,235	3.37	42,122	.....
17	\$6	\$7.88	\$3.94	\$11.82	\$6.61	\$1.39	\$4.48	\$4.48	\$1.38	\$1.67	\$4.90	\$6.85	.....	\$37.45	39.8	1,419,732	11,998,235	11,998,235	5.02	43,377	.....
48	\$6	\$9.66	\$5.66	\$15.32	\$6.45	.....	\$5.89	\$5.89	.....	.....	\$8.72	\$8.72	.....	\$36.21	35.1	1,300,000	10,578,593	10,578,593	2.77	39,988	.....
58	\$6	\$10.86	\$3.10	\$13.96	\$3.54	\$1.06	\$4.60	\$4.60	\$1.34	\$1.17	\$5.88	\$8.79	.....	\$35.86	30.8	530,000	9,278,593	9,278,593	7.55	44,277	.....
72	\$6	\$7.60	\$3.70	\$11.30	\$6.68	\$1.11	\$3.34	\$3.34	\$1.13	\$2.00	\$3.99	\$5.79	.....	\$34.98	35.6	1,049,800	8,749,800	8,749,800	2.53	38,399	.....
16	\$6	\$12.50	\$2.82	\$15.32	\$4.14	\$1.50	\$4.64	\$4.64	\$2.05	\$2.18	\$1.68	\$5.91	.....	\$34.15	33.2	1,619,000	7,698,793	7,698,793	2.53	38,399	.....
8-a	\$6	\$8.12	\$6.94	\$15.06	\$4.08	\$1.43	\$4.64	\$4.64	\$1.25	\$1.82	\$2.62	\$4.89	.....	\$32.09	17.8	3,426,035	5,305,793	5,305,793	4.43	36,522	.....
52	\$6	\$6.62	\$3.98	\$10.60	\$6.96	\$1.27	\$3.88	\$3.88	\$1.13	\$1.90	\$4.00	\$5.00	.....	\$30.24	6.6	1,339,674	1,929,678	1,929,678	2.46	32,700	.....
111	\$6	\$4.00	.....	.....	.....	\$4.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2.50	37,500	.....
Av. Costs	\$6.00	\$10.99	\$6.64	\$23.38	\$5.83	\$1.51	\$2.73	\$9.86	\$1.66	\$1.57	\$3.73	\$6.77	\$1.30	\$41.18	.....	30,107,092	.....	.....	\$5.43	46,611	77
68	\$6.00	\$10.97	\$4.70	\$21.63	\$6.10	\$1.26	\$2.47	\$9.74	\$1.53	\$1.50	August, 1920, Costs	Average Year to date	Average Year to date	\$39.42	.....	26,573,540	.....	.....	\$4.81	\$44.23	.....
74	\$6.00	\$10.28	\$4.87	\$21.15	\$6.14	\$1.07	\$2.54	\$9.75	\$1.44	\$1.56	Average Year 1919	Average Year 1919	Average Year 1919	\$38.58	.....	292,763,923	.....	.....	\$5.46	\$44.04	.....
80	\$6.00	\$8.61	\$4.10	\$18.64	\$5.24	\$1.95	\$2.45	\$8.60	\$1.22	\$1.54	Average Year 1917	Average Year 1917	Average Year 1917	\$33.81	.....	507,567,000	.....	.....	\$4.32	\$38.13	.....
80	\$6.00	\$6.81	\$3.15	\$16.38	\$4.27	\$1.81	\$2.05	\$7.43	\$1.07	\$1.48	Average Year 1916	Average Year 1916	Average Year 1916	\$30.27	.....	526,851,000	.....	.....	\$3.68	\$33.95	.....
68	\$6.00	\$3.66	\$2.37	\$12.45	\$2.74	\$1.50	\$1.59	\$4.73	\$1.67	\$1.05	Average Year 1915	Average Year 1915	Average Year 1915	\$31.19	.....	295,130,000	.....	.....	\$2.29	\$23.56	.....
63	\$6.00	\$2.61	\$1.79	\$10.20	\$1.99	\$1.35	\$1.18	\$3.52	\$1.42	\$1.91	\$1.99	\$5.34	\$1.75	\$17.12	247,854,000	\$1.85	\$18.97

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UNIVERSITY OF ILLINOIS STUDIES
IN THE
SOCIAL SCIENCES

Vol. X

September-December, 1922

Nos. 3 and 4

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WORKMEN'S REPRESENTATION IN INDUSTRIAL GOVERNMENT

BY

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Instructor in Economics
University of Illinois

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PREFACE

This study is primarily concerned with certain plans of workmen's representation in industrial government which have recently developed in the United States, and which have been variously designated as shop committee plans, employee representation plans, works councils, et cetera. It is the purpose of the study to present these plans in their true light with respect to their origin, form, methods of procedure, the theory underlying them, accomplishments, relation to forms of workmen's representation developed in other countries, and relation to the trade union movement in the United States. A proper consideration of the two points last named necessitated the inclusion of a chapter very briefly describing the council movement in foreign countries, and one describing the joint representative councils which have developed in connection with unions in the United States.

CHAPTER I

THE COUNCIL MOVEMENT IN FOREIGN COUNTRIES

There has developed recently in the field of industrial management a widespread and pronounced movement toward the formation of joint industrial councils, joint works councils, works committees, shop committees, and related bodies. In the literature of the labor movement they are often grouped under such general terms as "works councils," or "joint councils." Though somewhat diverse in form, these bodies have in common certain fundamental characteristics.

In all cases, national and district joint industrial councils have been groups composed of representatives from employers and from trade unions within an industry or section of an industry. They have developed extensively in England, and to some extent in the United States.

Works councils, composed of representatives from both the management and the workers within a single industrial works or plant, have developed in England, Germany, Norway, Austria, United States, and Czecho-Slovakia. In many industrial concerns having this type of council there are also joint shop committees or joint department committees, similar to the larger council in form and method of procedure. The representatives of the workers in these joint shop or department committees are generally elected by the men in the shop or department. Works councils, shop committees, or department committees are, in some cases, composed only of representatives of the workers. In such cases arrangements are made for a part or all of such councils or committees to meet and carry on negotiations with representatives of the management.

The primary object of this study is the description and evaluation of the non-union employee representation plans developing in American industries. The major portion of this study is, therefore, devoted to such plans. But the desire to present the larger aspects of the council movement and the necessity of comparing the non-union councils or committees with those based upon unions have lead to the inclusion of a brief discussion of the council movement in Europe, and also of certain types of joint councils based upon unions which have developed in the United States.

A. THE COUNCIL MOVEMENT IN ENGLAND

1. *Developments Prior to the Whitley Councils.* A committee was appointed in the English Parliament in 1917 to study the problem of industrial relations with a view to suggesting ways and means for gaining harmonious cooperation between capital and labor during the post-war reconstruction period. This committee, popularly known as the "Whitley Committee," brought in a report¹ that resulted in the establishing of national joint industrial councils, district joint councils, and works committees in many important English industries.

These Whitley Councils have been widely heralded as a more or less revolutionary change in the management of English industries. This change has generally been regarded as a result of the growing demand for democratic industrial control among English workers, especially among the Guild Socialists, Communists, members of the Social Labor Party, the miners, and the railway workers. These groups have long been striving for radical changes in the industrial organization in the direction of workers' control, or share in control through the medium of workshop committees, works councils, industrial councils, and similar bodies.

There is danger, however, of picturing as revolutionary a movement that has been essentially evolutionary in character, gradually expanding over a long period in the direction of an increased share in control for the workers. The truth of the matter is, the Whitley council movement has been and is an attempt to make a more general application of methods that had been thus gradually evolved as a part of the technique of joint industrial control by employees and unions. Therefore, an adequate description of the development of works councils in English industry begins with reference to the extent and character of the councils existing before the Whitley movement began.

The policy of forming joint councils of union representatives and employers to act as legislative bodies for drawing up general rules and regulations to govern industrial relations has been practiced

¹Reconstruction Committee, "Interim Report on Joint Standing Councils," printed in full in *Bulletin of the United States Bureau of Labor Statistics*, No. 255, Washington, 1919.

very extensively in England for many years. Such councils have dealt with wages, hours, working conditions, discharge, discipline, methods of payment, adoption of new processes and machinery, standards of work, distribution of work, overtime, holidays, and many similar matters. The following quotation throws light upon the general situation:

"The most obvious form of permanent machinery for collective bargaining is a joint committee, consisting of equal numbers of representatives of the employers and workmen respectively. This may almost be called the 'orthodox' panacea of industrial philanthropists. For over thirty years, since the experiments of Sir Rupert Kettle and Mr. Mundella, employers and workmen have been persistently urged to adopt the form of a 'board of arbitration and conciliation,' consisting of representatives of each side, and with or without an impartial chairman or an umpire. Such a joint committee, it has been supposed, could thrash out in friendly discussion all points in dispute, and arrive at an amicable understanding. In intractable cases, the umpire's decision would cut the Gordian knot. Readers of the 'History of Trade Unionism' will remember how eagerly this idea was taken up by the organized workmen in certain great industries, and how, in coal mining and iron and steel in particular, it has since enjoyed the favor both of employers and employed. We need not stop to describe all the cases in which this form of machinery has, from time to time, been adopted. We shall best understand its operation by considering a couple of leading instances, the 'joint boards' of the boot and shoe trade, and the 'joint committees' of the Northumberland and Durham coal miners."²

These joint councils have been local in the majority of trades, and local and district and national in many trades. They are typically composed of an equal number of representatives of employers and workers, and in some cases there is an impartial chairman. They meet regularly and adopt trade agreements. There is usually direct or indirect provision in the agreements for renewal of negotiations, thus making these joint councils more or less permanent in character.

²Webb, Sidney and Beatrice, *Industrial Democracy*, p. 185.

There are many instances of joint councils which meet regularly to consider all matters of interest to the trade, and thus become of a more continuous and constructive character than those councils formed merely on the occasion of new agreements. These permanent bodies oftentimes perform the functions of a conciliation board as well as a legislative body, an example being the early conciliation boards in the building trades. Their functions are described as follows: "Although the principal objects of the Conciliation Boards are the settlement of disputes, . . . it shall also be within their province to meet and discuss any question of trade interest at the request of any of the parties to the agreement."³

Similar boards in the plumbing industry had as their objects "to consider any question affecting the plumbing trade and to procure the improvement of any existing laws, usages and customs, which the Board may consider to be prejudicial to the trade, and to amend or oppose legislation or other measures or the establishment of any usages or customs which in the opinion of the Board might prejudicially affect our craft."⁴

The Birmingham Alliances in the Light Metal Trades,⁵ the early National Council in the Cotton Industry,⁶ the Joint Councils to which Carpenters', Bricklayers', Stonemasons', Plumbers', and Plasterers' Unions have been parties, and the early Joint Conferences in the coal mining, and boot and shoe industries, are further examples.⁷

It is apparent, then, that the trade union movement had obtained for the workers a considerable share in industrial control through the medium of national and district representative joint councils long before the Whitley movement developed.

The most important national industrial joint council in England which existed previous to, and independent of, the Whitley Councils, is the Industrial Council of the Building Industry which has oftentimes been referred to as the forerunner of the Whitley Councils. This industrial council was first suggested by the Na-

³Goodrich, Carter L., *Frontier of Control*, p. 224.

⁴*Ibid.*, p. 224.

⁵*Ibid.*, p. 236.

⁶Webb, Sidney and Beatrice, *Industrial Democracy*, p. 176.

⁷*Ibid.*, chapter on "Method of Collective Bargaining."

tional Building Trades Councils which represent twelve of the unions in the building trades. They submitted a memorandum to the National Federation of Building Trades employers of Great Britain and Ireland, proposing a "National Industrial Parliament for the Building Industry." Their proposal resulted in the formation in May, 1918, of the "Industrial Council for the Building Industry." The character of the council is provided for in its constitution as follows: "The Council shall consist of 132 members, appointed as to one-half by Associations or Federations of Employers and as to the other half by Trade Unions or Federations of Operatives."⁸ The general object of the council is stated in these words: "The Council is established to secure the largest possible measure of joint action between employers and work-people for the development of the industry as a part of national life, and for the improvement of the conditions of all engaged in that industry."⁹

In order to accomplish this broad purpose, the council is to devote its time and energies to such constructive work as: regularizing production and employment; minimizing the fluctuations of trade; introducing scientific management; reducing costs; improving welfare methods; enlarging the membership of employers' and employees' organizations; utilizing the practical knowledge of the workers; giving to workers greater share in determining working conditions; making earnings and employment secure for the workers; promoting research and study of improvements in the works; collecting and circulating statistics on matters concerning the industry; arranging for more education among the workers; giving to the community, through the press, a knowledge of matters affecting the industry that are of interest to the public; showing the government department and local authorities the needs of the industry; cooperating with the joint industrial councils of other industries; having important matters fully discussed by committees of inquiry, joint district boards, works committees, trade papers, and general press.

The council has several outstanding features: (1) It is not a means of handling disputes; it is for constructive purposes only. (2) It proposes to do away with the antagonism and hostility

⁸Bloomfield, Meyer, *Management and Men*, p. 488.

⁹*Ibid.*

between employers and men, and to substitute constructive co-operation based upon mutual confidence and good will to the end of increasing the efficiency of the building industry. (3) This group will consider and propose legislation. The government has consented to recognize and consult it as the spokesman of the industry on matters of legislation. (4) This council is in a large, staple, and highly organized industry. Nearly one million men are employed in it. (5) It recognizes that industrial efficiency cannot be achieved by a balance of power between unions and employers' associations "with some Supreme Court of Appeal in the background," but must be based on "mutual confidence, real justice, and constructive good will." (6) It provides for decisions by a majority vote of the whole group, rather than a majority vote within each group, as in the case of the Whitley Councils.

Turning now from the national and district joint industrial councils to the local works committees, or works councils, we find that in this case also, the Whitley works committees have been preceded by a long experience with similarly formed works committees. Many works committees existed in English industries long before the Whitley movement, and many exist today independent of the Whitley Councils.¹⁰

The basis of these committees is the union shop steward. This term is hereafter used to designate all those representatives of the union workers in a shop variously designated by such terms as: shop assistants, works representatives, shop delegates, collectors, yard committeemen, and works directors.

The functions of the shop steward as a union representative are generally to collect dues; to guard against defaulters; to investigate union records of newcomers; to supply the union district committee with information; to participate and negotiate with management respecting grievances; to call shop meetings to discuss grievances; and to enforce union rules in the shop.

However, as a rule, shop stewards do not function individually. In all the larger establishments there exist many stewards for each union. These stewards commonly elect a works committee of three or more from their own number to carry on any of their

¹⁰The following discussion of works committees is based upon the "Report of an Inquiry Made by Ministry of Labour," *Industrial Reports*, No. 2, London, 1918.

functions. Also there exist many trade unions within the same works. Many of the problems which need to be handled by these committees are common to all those employed in the works; therefore there has developed a great variety of works committees which have absorbed the general functions of the individual trade union, shop committee, or works committee. The shop steward or the shop stewards committee of the particular union may still function separately to collect the dues of its members and perform similar union duties; but in respect to its general work, it has in many cases become a part of, or been replaced by, some broader works committee more representative of all the workers in the shop or works.

The functions of these committees, though varying in different places, may typically be part or all of the following: to investigate grievances and present worthy cases to the management; to investigate individual complaints about wages and piece-rates and negotiate their adjustment with the management; to consider questions concerning the health and safety of the workmen; to consult with the management concerning the circulation of awards, orders, and circulars; to consider generally the condition of work in the establishment; to arrange shifts and hours of admission to the works; to allocate piece-work and time-work; to consider problems of works discipline, time-keeping, methods of paying wages and overtime work; to cooperate with the management in suggesting improvements tending toward greater efficiency; to negotiate with employers concerning discharges; to negotiate with employers concerning choice of foremen; to consider problems of dilution, wage bonuses, changes in machinery, rules for apprentices, and various kinds of welfare work; to consider questions of recreation, education, social insurance, etc.

There are several typical methods of electing members to these works committees. They may be elected by all union and non-union workers in an establishment, each department electing representatives. This often exists in shops having an organization of shop stewards, and generally results in the election of these shop stewards to works committees. In other cases there is a committee of all the shop stewards or a committee elected by, and from among, the shop stewards in large plants. In still other cases, elections are based upon individual trade unions, each one

choosing representatives in proportion to its size within the shop. This method oftentimes results in the election of shop stewards to the committees. In a few cases, the representatives on the works committees are appointed by the local branches of the various unions involved. This also quite commonly puts the shop stewards on the committee.

It is apparent, therefore, that, prior to and independent of the Whitley council movement, works committees and special committees of workers of various types had been gradually developing in British industries for many years. At the present time there are few industries that do not have them in some form. These committees have operated, as a rule, as an integral part of, or at least in harmony with, the trade unions, and there has been a general tendency for these committees to extend their powers and broaden their functions. While these committees have not been constituted as joint committees, they have functioned as joint committees of management and men. They have, as a rule, no final authority except as the power of the organization which they represent gives them authority.

According to the Report of the Ministry of Labor,¹¹ these local works councils or works committees have proved to be highly successful. They have proved to be constructive, since "more improvements can be introduced in an atmosphere of harmony than can be introduced in an atmosphere of suspicion;" produced better relations between management and men; increased efficiency, because "more time is gained by absence of disputes than is lost by the presence of discussion;" improved time-keeping; increased output; and prevented strikes "by providing a channel for the ventilating of grievances at an early stage before they become acute."

These facts seem to bear out at every point the theory that more democratic industrial management is conducive to the removal of distrust and suspicion of the worker toward the management; and that when distrust and suspicion have been removed, cooperation and increased efficiency result.

2. *Whitley Councils in England.* The committee which has come to be known as the "Whitley Committee," although appointed in October, 1916 by the Prime Minister Asquith, was

¹¹*Ibid.*

called officially a "Reconstruction Committee,"¹² and was created to deal with the problem of reconstruction in the post-war period. Its instructions were to make and consider suggestions for securing a permanent improvement in the relations between employers and workmen; and to recommend means by which industrial conditions affecting the relations between employers and workmen could be systematically reviewed by those concerned, with a view to improving such relations in the future.

The committee urged that these objects could be attained best by the creation of a system of joint industrial councils, which would include works committees composed of representatives of the management and the workers in a particular works; district councils, composed of representatives of the various trade unions and employers' associations in a certain district within an industry; and national joint standing industrial councils, composed of representatives of the national employers' associations and the national trade unions within an industry.

To September, 1920, sixty-eight national joint industrial councils had been formed in compliance with the recommendations of the Whitley Committees. Twenty of these were formed in 1918; thirty-one in 1919; and seventeen in 1920. Seven of these were suspended, leaving sixty-one in operation, representing over 3,500,000 workpeople.¹³

The functions assumed by these joint industrial councils are practically identical with those suggested by the Whitley Committee.¹⁴ They have undertaken the work of considering measures for securing maximum production; considering means by which the greatest possible security and continuity of employment shall be obtained for employees; encouraging study and research with a view to the improvement of the quality of the product and methods of manufacture; providing facilities for the full consideration of inventions and improvements designed by the work-

¹²Reconstruction Committee, "Interim Report on Joint Standing Industrial Councils," printed in full in *Bulletin of the U. S. Bureau of Labor Statistics*, No. 255, Washington, 1919.

¹³*Bulletin of Ministry of Labour*, Industrial Councils Division, No. 3, September, 1920.

¹⁴Reconstruction Committee, "Interim Report on Joint Standing Councils," *Bulletin of U. S. Bureau of Labor Statistics*, No. 255, p. 19.

people, and the adequate safeguarding of the rights of the designers; inquiring into special problems of the industry, including the comparative study of the organization and methods of the industry in this and other countries. All of these joint industrial councils have undertaken the function of representing "the needs and opinions of the industry to government authorities both central and local" and "the consideration of such matters as may be referred to the Council by the government, government departments, or other authorities."

In every case, these councils have taken over the function of the regular consideration of wages, hours, and working conditions in the industry as a whole, with a view to improving such conditions and securing for the employees the just share of the prosperity of the industry. In addition to these duties, many of the councils have undertaken to compile statistics and collect information regarding the industry; and to take measures to secure the inclusion of all employers and workpeople in their respective organizations. In many instances also, the councils have assumed the function of providing more adequate means of conciliation and arbitration of disputes, and the supervision, education, and training of apprentices. Finally, in all cases they have taken over the work of superintending the creation of district councils and works committees in so far as they consider them to be necessary.

The suggestion in the Whitley report that the council be composed of representatives of trade unions and the employers' associations, with a due regard to their proportionate numbers, has been carried out in all instances.

In September, 1920, there were over twenty-five industries in which district councils had been set up. The territorial basis of these district councils is determined by the national joint industrial council.

In general, the constitutions of the district councils are the same as for the national council in respect to provision for membership, reappointment, officers, committees, meetings, voting, finance, keeping of minutes, and functions. The intention is that the district councils shall cooperate with the national council, and work under its direction and control in carrying out their numerous functions within the district; and shall take executive action respecting any of those functions when the matter involved affects

only their particular district. It considers propositions referred to it by the national council, makes recommendations to the national council; and refers such matters on which it cannot make a decision to this council. All actions taken by the district council are subject to veto by the national council if it considers that the interests of other districts are involved.

In September, 1920, works committees had been set up in twenty-five industries, and the formation of such committees was under consideration in the national councils of twelve other industries.

The Whitley works committees are usually joint committees composed of representatives from the workers and management, but as a rule, there are more representatives of the workers than of the management. Representatives of the workers are elected, in some cases, by the union men in the shop. In either instance, the committee works strictly in cooperation with the trade unions and subject to their national and district agreements. The representatives of the workers are elected for short terms, elections being held by ballot, generally on the basis of departments, unless larger units are necessary to keep down the size of the joint committee.

In most of the joint works committees, meetings are held during working hours at regular intervals of one, two, three, or four weeks. The agenda for the meetings is distributed to the members of the committee beforehand; unlisted business is taken up only by agreement. Sub-committees are very often created to deal with special subjects. In case of questions affecting special groups or particular departments, either the workman or the employer, if either so desires, may call in representatives from such groups or departments. The majority of the constitutions provides for separate meetings for the workers' representatives and for the election of a secretary by the workers' section of the committee. In carrying on his business, this secretary can enter any department in the works, and at any time. The workers' representatives are compensated either by the workers or the company, or by the two jointly, for the time spent in the meetings.

Subject to the limitations noted above, these works committees perform many functions. Their most important work has been done in connection with the following subjects: methods of employment and discharge; questions of discipline; settlement of

grievances; training of apprentices; suggestions for improvements in processes, organization, and machinery; holidays, vacations, etc.; sanitation, ventilation, safety, and many similar problems; application of wage scales and piece prices to individuals; general workshop rules; recreation, as games, dances, etc.; consideration and encouragement of inventions and improvements on the part of the workmen, safeguarding the rights of those responsible for such inventions or improvements; and consideration of any other means whereby greater cooperation and efficiency can be attained.

In this system there is a regular course of procedure followed in connection with the taking up of grievances. The individual workman takes his complaint first to his departmental representative. If this representative fails to effect a settlement, he carries it to a workers' secretary. If the latter fails, the question goes before the joint committee. In case the works committee disagrees, the matter is taken up, in some cases, with the unions involved, or in other cases, directly with the district council. At all times, works councils are limited by the powers and decisions of the district or national councils, or any existing agreements between the trade unions and the employers. Decisions must be reached in these committees by unanimous vote or sometimes by a majority vote within the groups of representatives from each side.

The Ministry of Labor, during the last two years, has published in the *Labor Gazette* monthly reports of the activities of the Whitley Councils.¹⁵ It has also published four Bulletins containing summaries of the activities of these councils.¹⁶ A digest of the activities of the Whitley Councils has been compiled by bringing together the material found in all these reports and analyzing and classifying it. The following discussion is based upon this digest:

At the time that the Whitley Councils were initiated, many bodies for the settling of disputes already existed. It was specifically stated by the Ministry of Labor that the Whitley Councils were not intended as substitutes for these existing bodies. How-

¹⁵See files of the *Labor Gazette*, Ministry of Labor, Whitehall, London, for years, 1921, 1922.

¹⁶Joint Industrial Councils, *Bulletin of Ministry of Labor*, Industrial Councils Division, Nos. 1, 2, 3, 4.

ever, one of the functions definitely assigned to them was "the establishment of regular methods of negotiation arising between employers and workmen." The intention of the government in this respect has been carried out. The Whitley Councils have not been used extensively for the purpose of settling disputes. The reports of the Ministry of Labor devote considerable space to the subject of disputes and conciliation, but an analysis of these reports shows that the councils have devoted their attention chiefly to setting up various types of conciliation and arbitration committees, either local, district, or national in character.

The subject which has received the most attention in Whitley Councils is that of wages. The reports of the Ministry of Labor, covering activities of the Whitley Councils up to 1922, show that the national joint industrial councils have adopted new wage scales in ninety-five cases. Of these, forty have been general wage reductions; eighteen have been wage increases; and thirty-seven have been concerned with readjustment of piece-rates, bonus plans, overtime pay, and holiday pay. In the last group, the reports do not designate whether the rates have been higher or lower than the rates previously existing. In connection with forty-five of these wage agreements, there has been adopted a national minimum wage.

Next to wages, the question of hours has received most attention by the Whitley Councils. The records show that twenty-eight agreements, establishing new regulations for the length of the working day, have been made in the Whitley national joint industrial councils. In at least fifteen of these cases, the forty-seven hour week has been adopted for the entire industry concerned. The majority of the others have established the forty-eight hour week. In the china clay industry an agreement has been reached establishing the forty-two hour week with the reduction of wages. In all these cases there has been a reduction of the length of the working day, and in a majority of these this has been done without a reduction of wages.

The question of apprenticeship has received almost as much attention in the Whitley Councils as the question of hours. Twenty-five of the national joint councils have appointed special committees to formulate national rules and regulations for governing the supply and training of apprentices. Among the industries that

have already adopted the reports of such committees are the following: bobbin making, electrical contracting, building, pottery making, cooperage, scottish baking, heating and domestic engineering, glove making, and optical instrument manufacturing.

The two topics, research and statistics, are classed together in the reports of the Ministry of Labor. The topics which have been the object of special research by sub-committees of Whitley national joint industrial councils are wages, prices, methods of determining prices, profits, scientific management, reduction of costs, workshop conditions, apprenticeship laws and rules, housing, standardization of rates, reduction of costs, and the cost of living.

Further activities of the councils have been concerned with plans to bring all workers and employers within their respective organizations; with the publishing of books describing their work and aims; with matters of welfare and safety; with means of enforcing agreements; with unemployment; and with workmen's compensation. The reports, however, do not show that very extensive results have been accomplished in these matters.

This brief review of the work of the Whitley national joint industrial councils shows that their attention has been directed chiefly to the consideration of wage scales, hours, working conditions, apprenticeship, and similar matters that have always been the principal subject matter of trade agreements. Over ninety national trade agreements have been formulated by these councils. In respect to subjects dealt with, the Whitley Councils have not differed from those annual or occasional joint councils which have been held for many years in most English industries for the purpose of formulating trade agreements. One notable exception to this statement is found in the work of the Building Trade Council in introducing scientific management into the building industry.

Some of the functions assigned to the Whitley Councils in the Whitley Report, and subsequently included in the constitution of these councils, receive little, if any, mention in the government reports. The better utilization of the practical knowledge and experience of the workpeople; the provision of facilities for the full consideration and utilization of inventions and improvements designed by workpeople, and for the adequate safeguarding of the rights of the designers of such improvements; the improvements

of processes, machinery and organization, are functions which it was intended that the Whitley Councils should perform. The Reports of the Ministry of Labor concerning the work of these councils make no reference to such activities.

The evidence which has been reviewed affords sufficient basis for the conclusion that the Whitley Councils have constituted an important development in English industrial management. The employers and the organized workers in more than sixty English industries have been brought together in these councils, and have there jointly considered and settled many important problems in the light of facts ascertained by joint investigations. This intimate and continuous association for the purpose of attaining industrial peace and cooperation, and the extensive work of the joint sub-committees of these councils in ascertaining facts upon which to base decisions and agreements, are the distinctive accomplishments of the Whitley Councils.

However, these Whitley national and district joint councils are similar in their essential characteristics to the joint conferences which have long existed in English industry. They are, in each case, joint councils of representatives of the unions and the employers, in which decisions are made not by majority vote, but by agreement. The Whitley Councils are of a more fixed and permanent character, in that they meet more regularly and have a permanent personnel and the members are elected for a fixed term of office. The older type of joint conferences met, as a rule, only when emergency arose or new agreements were to be negotiated; and then members were elected only for the particular occasion.

It is true that the Whitley Councils differ from the older type of joint councils in some of their proposed functions. The older type of councils generally performed no further function than the formation of the typical trade agreement. The Whitley Councils, however, have been assigned broad constructive work, such as the consideration of means for the better utilization of the practical knowledge of the workers; the means of securing for the workpeople the greatest possible security of earning and employment; technical education and training; industrial research; facilities for full consideration of inventions made by the workers and for safeguarding the workers' rights therein; improvements in processes,

machinery, and organization; and proposed legislation for the industry. It is these broad constructive functions of the Whitley Councils that are supposed to differentiate them most clearly from previously existing joint councils. However, the analysis of the work which the Whitley committees have thus far performed indicates that though they have made some substantial progress toward constructive joint industrial management, they have been chiefly occupied with the same problems which have occupied the time of joint councils in the past, i. e., wages, hours, holidays, overtime, working conditions, and the like.

The same difference in proposed functions is to be noted in this case as in the case of the national joint councils. The Whitley Committees have nominally assumed broader and more constructive functions; but on the whole, their activities have been concerned with the same problems which have absorbed the attention of other works committees of the past and present.

B. THE COUNCIL MOVEMENT IN GERMANY

In 1891, there was passed in Germany a labor law which provided for the creation of workmen's committees in German factories.¹⁷ These committees were to cooperate with the management in the making of rules and the regulating of working conditions. In a few of the factories they were created and manipulated as a weapon against the trade union movement. Also, before the war, laws were passed in various individual states in Germany which made it obligatory upon mining concerns employing over one hundred men to give workers representation through committees for the control of working conditions in the mines. These committees were to meet with the employers to settle all disputes and to "discuss proposals, wishes, and complaints of the workers concerning their working contract." When an agreement could not be reached in such meetings, the questions under consideration were referred to arbitration.

This was a very noteworthy advance in the direction of industrial democracy. One German writer says in this respect:

"These committees were the forerunners of the later Betriebsräte (works councils). While the social protection of the

¹⁷Ohse, H., *Annals of the American Academy of Political and Social Science*, Vol. XCII, November, 1920, p. 54.

employee was diminished during the war, the social determination of the workingman and salaried employee gained ground in industrial establishments through the organization of workers. The authority of the employer was, therefore, already overthrown before the revolution started."¹⁸

The revolution in Germany occurred in November, 1918. Almost simultaneously with the revolution, there sprang up a multitude of councils among the workmen, soldiers, sailors, and peasants. It has been estimated that there were over ten thousand of these councils in existence during the winter of 1918-19.

These councils were very heterogeneous in nature. They were chiefly inspired and led by the Spartacists and radical Socialists of the extreme left, but were also supported by many of the more conservative Socialists, as well as many members of the numerous other political parties. They were not only heterogeneous in respect to the political affiliations of their members, but were also very diverse in form. At the top were two large councils, the Council of Greater Berlin, and the Council of the People's Commissioners. Below these were various gradations, based upon a wide variety of constituencies. They included communal councils, factory councils, regimental and company councils, and sailors' councils.¹⁹

Late in November, 1919, these councils assumed supreme power in the government, and called a congress of workmen's and soldiers' councils from all Germany to meet December 16. This congress was dominated by the moderate Socialists and conservative parties. They elected Herr Ebert president. Herr Ebert's government immediately issued a program which promised among many other things, "the control of wages and conditions of employment by organizations of employers and employees." This was an effort to conciliate the radical elements. Notwithstanding this, the government immediately set to work to remove the fangs from the existing councils by gradually stripping them of all political power and replacing them by workers' and employees' committees. The supporters of the council movement were not satisfied with the new conditions and never ceased their agitation for

¹⁸Sinzleimer, Hugo, "Development of Labor Legislation in Germany," *Annals of the American Academy of Political and Social Science*, Vol. XCII, p. 31.

¹⁹Laidler, H. W., *Socialism in Thought and Action*, Chapter XII.

more democratic control of industry. As a result of their agitations and the other influences which had been working toward this more democratic control of industry, Article 165, which provides for works councils in German industries, was incorporated into the German constitution July 31, 1919.

In explanation of their support of Article 165 in the new constitution, the German national government issued a detailed announcement in March, 1919, in which they expressed the following interpretation of the works council movement:

"The conception underlying the movement for the formation of these councils is of a two-fold nature. The worker, as such, is striving for the direct and independent assertion of his interests within the works at which he is employed; and also, as one of the general public, is striving to achieve the right to cooperate in the process of production itself, a process in which his employer has hitherto had sole control, his desire being to cooperate in a status superior to that of a mere wage-earner, i. e., from a position which will afford him a view of his industry as a whole; so that he may help toward its development."²⁰ This, of course, was a very mild interpretation of the underlying current in the works council movement; and perhaps stated more accurately what the government desired the works council movement to be and what they proposed to make of it.

The militant advocates of the works council movement desired to make the works council system the very fundamental basis of the government, not only of industry, but of all phases of German life. The moderate government, however, was in control, and the new constitution was adopted, with the council movement confined to the status defined in Article 165 which reads in part as follows:

"Workers and salaried employees are called upon to cooperate in conjunction with the employers, on equal footing, in the settlement of the conditions of pay and work as well as in the economic development of the productive forces. The organization of both and their agreements are recognized. The workers and salaried employees are, for the purpose of securing their social and economic interests, given legal representation in the form of shop

²⁰*Monthly Labor Review*, U. S. Bureau of Labor Statistics, September, 1919, p. 125.

councils, as well as district labor councils, organized according to industries, and a Central Labor Council, (Reichsarbeiterrat)."

Only the short interval between July 31 and August 21 elapsed between the passage of the broad constitutional guarantees and the introduction to the Assembly of a bill to provide the machinery and regulations for putting these guarantees into practice. The law was passed January 18, 1920, and went into effect some time in February. The law, as finally passed, contained the following significant features:

1. *Object.* For securing the economic interests of the employees against the employer and for supporting the employer in the fulfillment of the purposes of his establishment, shop councils must be created in all the establishments where usually at least twenty employees are occupied. Agricultural, commercial, and industrial establishments are included.

2. *Nature of Works Councils.* The works council is elected by all manual and salaried workers. A separate workers' council is elected by the manual workers, to look after the interests peculiar to their group. A salaried employees' council is elected by the salaried employees, to supervise their group interests.

3. *The Works Assembly.* All the workers of the establishment constitute a works assembly. Separate works assemblies may be held by the manual workers and by the salaried employees. The employer may be represented, but cannot vote in these assemblies.

4. *Time of Meetings.* All meetings of the various councils are held regularly outside of working hours. Exceptions are reported to the employer. Meetings of the works assemblies are held outside of working hours except when the employer's consent to meetings during working hours is obtained.

5. *Compensation.* Members of the councils are not compensated. Necessary loss of time, due to attendance at meetings of the council, does not entail reduction in wages or salary.

6. *Functions of the Works Council.* The works council is expected to aid the management in every way possible to secure the most efficient and economic conduct of the business, and to cooperate in furthering the introduction of improvements in produc-

tive processes. At the council's request the employer must convene a monthly meeting to discuss jointly improvements in plant, machinery, and administrative methods.

The council is to protect the establishment from disturbances arising from disputes among the workers or between the workers and employers. If such disputes cannot be settled by negotiation, the councils of manual workers and salaried employees name an arbitration committee.

The works council sees that the awards of the arbitration committee are carried out; negotiates new shop regulations in modification of existing agreements with the employer; strives to promote harmony among the workers and between them and the employers; strives to maintain the independence of the unions; has power to hear the grievances of the workers and to negotiate with the employer concerning them; and has power to participate in the administration of housing, pension funds, and other welfare projects.

7. *Functions of the Manual Workers' and Salaried Employees' Councils.* The manual workers' and salaried employees' councils enforce within their group standard wage agreements and awards of the arbitration committee; cooperate with the unions in securing wage agreements when such agreements do not already exist; regulate the hours of work; fix rules respecting vacations; handle matters pertaining to apprentices; adjust complaints between members of their group and the employer; appoint arbitration committees when necessary; call attention to unsanitary or dangerous conditions in the establishment; cooperate with inspection officials by giving advice and information; aid in enforcing police and safety regulations; cooperate with the employer in establishing rules, hiring and discharging workers or employees; and cooperate in the aid of those injured in war or by accident.

These councils may also investigate and negotiate with the employer concerning cases of: dismissals for political, military, religious, or trade union activities; unjustifiable discharge not due to the conduct of the employee or the condition of the establishment; discharge without notification of cause; or dismissal for refusing to do work not called for under existing contracts or agreements.

If no agreement is reached by negotiation between the employer and the manual workers' or salaried employees' councils, the case goes to the arbitration board whose decision is final.

8. *Relation to Trade Unions.* Among the various duties of the works council is the provision that it shall strive to preserve the integrity and independence of the workers' organizations in negotiating for working agreements with the employers. The right of appeal to arbitration is given in the case of dismissal on account of trade union activities. Representatives of the trade unions may take part in the meetings of these works councils on demand of one-fourth of the members of the council. (Associations of which the employer is a member may also be represented in negotiations with the works council.) There is express provision that the rights of all legal existing workers' organizations shall be preserved. The effort is made to make it clear that the law is meant as an aid and supplement to the trade unions; not as a substitute. The works council can negotiate with the employers only concerning new rules of service, or correction of existing rules, when such negotiations do not conflict with existing agreements formed in other ways.

9. *Rights of Works Councils Respecting Information from Company.* Concerns employing over three hundred workers and fifty salaried employees, must, if these works councils desire, present to the workers' representatives an annual balance sheet showing profits and loss for the last year. In works which have no board of directors, the employer must furnish the council with information affecting all matters involving the workers' interests, and must, if the council desires, present a quarterly report of the standing and progress of the industry in general. In works having a board of directors, the council may have two representatives upon such a board, to gain information as to business conditions. These requirements carry the qualifications that such information as might endanger business secrets, and therefore the welfare of the industry, need not be revealed to the works council. It is also provided that members of the works council are bound to preserve secrecy, upon penalty of heavy fines and imprisonment, respecting all information of a confidential nature revealed to them.

This law went into effect February 4, 1920. Within six weeks from that time all industries were to have elected works councils. The councils were to supersede all existing workers' committees. The law has been generally complied with, and the works councils formed, but there has been a tremendous number of conflicts regarding its interpretations. It is assumed, however, that such conflicts will gradually be settled, and a generally accepted interpretation of the law will be developed.

It was bitterly opposed both by employers and by the workers, and its final form, as summarized above, was a compromise which gave very little satisfaction to either group. The workers' forces are directing their criticism at two or three points in particular. In the first place, they are dissatisfied with the provisions relating to the handling of employment, discharge, and shutdowns in the plants. These were among the most bitterly contested provisions of the bill. The workers, it seems, were particularly anxious to place the control of hiring, firing, transferring of workers, and suspension of work in a joint council in which the men would have at least equal authority with the management. They wished to end the arbitrary control over the personnel which had existed for so long a time. Discrimination against labor leaders and union men could thus have been eliminated, and that security of employment gained which is felt to be so fundamental to the welfare and efficiency of the worker, as well as so necessary if he is to have the courage to carry on his fight fearlessly against the employer.

As the law stands on these points the workers feel that they were defeated. The councils have a right only to cooperate with, and give advice to, the employer respecting policies of employment, discharge, transfers, and shutdowns. They can advise, but the employer is free to reject their advice. The only definite power held by the councils on these points is that given in the summary above, which allows them in certain specified cases to investigate dismissals; "negotiate with the employer concerning them;" and if unable to come to an agreement with him, to have them referred to arbitration. This is of considerable value in the cases specified, but is very limited as compared to the desires of the workers. One German writer says of these provisions: "This fallacy of the law is one of the chief reasons for the passionate

criticisms directed against it by the workers, even in these days. The first supplementary law will have to provide for new regulations of cooperation in shutdowns and dismissals.”²¹

A second point which was bitterly contested, was the provision respecting the right of the works council to have inside information respecting the affairs of the business. The Socialists were particularly active in demanding this right. The employers opposed it as dangerous to the welfare of their concern, and therefore the general welfare. The workers do not feel that they were entirely defeated on this point, for, as noted above in the summary, the works councils can demand fairly adequate information in most cases. However, much criticism has been directed toward the provisions that such information must be kept secret by the council. This provision makes it impossible for the representatives to report to the workers the causes for their actions, or to consult with the workers as to their wishes respecting many questions. But under the existing industrial scheme in Germany, the compromise by which the workers' representatives may be informed of the business secrets in their concern seems to the moderate and conservative forces in Germany to be all that any fair-minded worker could expect.

A third and more general criticism which is directed toward the works council law is that the law, as a whole, fails to grant to the workers a sufficient share in the management of the industries to gain the ends desired. It is pointed out that due to the war and subsequent events, the efficiency of German industry has declined to such an extent that the nation as a whole is suffering serious effects. The workers have been demanding a large share in the control of industry. Their efficient cooperation in the reconstruction program can be obtained only at the price of a substantial concession to this demand. It is urged that a share in control sufficient to gain this objective, must be, at the least, equal representation in joint councils in which all matters of interest to the working men, such as wages, hours, conditions, discharges, and discipline would be settled or referred to an approved board of arbitration.

²¹Aufhauser, S., *Annals of the American Academy of Political and Social Science*, Vol. XCII, November, 1920, p. 51.

The fact that the present law does not grant any ultimate authority to the works councils cannot be questioned. In all cases they have power only to cooperate with, or to advise, the employer who is left free to reject their advice. The government's statement in March, 1919, respecting the works council law stated that the law did not intend to curtail the employer's right to run his business as he saw fit. To what extent the works councils, as created, will gain the efficient cooperation of the mass of the workers, we have as yet no very accurate evidence. General press reports seem to indicate that labor troubles have increased rather than abated in Germany.

The trade unions are apprehensive of these new organizations. There has been a considerable amount of labor unrest, breaking out here and there in acute labor troubles, because of the conflict between the trade union forces and the supporters of the works councils. At a Works Council Congress held in Berlin, October, 1920, the power of the trade unions within the works council movement was evidenced by the fact that all the delegates were members of trade unions. This congress discussed the growing dispute as to whether there should be an independent central organization of works councils, or whether such a central organization should be definitely coordinated with the central trade union organizations. The policy of coordination with the trade unions was approved. However, this congress was not convened in accord with any provision of the works council law.

The present relationship between the unions and the works councils has been described as follows:

"The trade unions remain, as formerly, the professional representative of the interests of the workers and employees. However, they have fully realized the necessity of recognizing the industrial council as a new confederate in the emancipation of the workers, and the necessity of making possible a systematic cooperation of council and trade unions. According to this arrangement, the control of production is looked upon as a peculiar field of the industrial councils while the trade unions are making arrangements for the training of the councils. The attempts to create independent organizations of industrial councils separate from the trade unions have not been accompanied by success. On the

contrary, one can definitely state that with the growing importance of the councils, the power of the trade unions has increased simultaneously."²²

The general attitude of the unions seems to be that the diplomatic course for them to follow is to dominate the works councils and use them to further the interests of organized labor. If this policy is followed successfully, the works councils will become an aid to the unions. The employers in Germany are well organized. The Union of German Employers' Federations is a powerful body, combining 130 national federations of employers, and representing employers of over 4,000,000 workers. The opposition of this union to the works council law was very bitter. Its final modified form was due largely to their efforts. Some light has been thrown on the attitude of the German employers toward the works council law by a secret circular letter which their association sent out. A copy of this letter was obtained by the workers and was published. It stated:

"The plans for a general strike of the employers against the enactment of the works council law have not been carried out, owing to reasons of expediency. It is also not intended to use sabotage against the law. Employers are, however, urgently requested to adopt a strong defensive attitude in the application of the law against all attempts to go beyond the letter of the law made either by the regulations for the enforcement of the law or by the workers. Employers are especially admonished against making concessions in the application of Article 62 of the law (which provides cases where councils need not be formed). In the framing of shop regulations and in the conclusion of collective agreements, employers should not go beyond the bound of legal obligations."²³

C. WORKS COUNCIL LAW OF AUSTRIA

A law which went into effect July 25, 1919 in Austria, provided for compulsory works councils in all establishments having over twenty employees. The principal functions of these works councils are: attending to the concluding, maintaining, and interpret-

²²*Monthly Labor Review*, U. S. Bureau of Labor Statistics, March, 1921, p. 130.

²³*Ibid.*, p. 131.

ing of collective agreements in cooperation with trade unions; fixing piece-work, time, and average and minimum wages, where not fixed by agreements; cooperating in the concluding and amending of labor contracts; supervising enforcement of labor laws; cooperating in maintaining discipline; examining pay-rolls and controlling payment of wages; and participating in management of all welfare institutions.

Among the privileges which the law accords to the works councils are the right to appeal, if they desire, to a Board of Conciliation for settlement of cases of discharge for political or trade union affiliations; to demand a yearly balance sheet, a profit and loss account, and statistics of wages paid in establishments having thirty or more employees; and in joint stock companies to elect two members to the Board of Directors.

All employees over eighteen, employed at least one month, can vote; but to be eligible to the council an employee must be twenty-four years of age and have been employed in the works at least six months. One-fourth of the council may be elected from members of the Executive Committee of a trade union to which the employees in the works belong.

Arbeiterkammern, or Workers' Chambers, have also been created in Austria since the war. Members are elected by the workers in a community. The functions of these Chambers are "to give reports, memoranda, and proposals concerning the regulation and protection of labor, workers' insurance, and aid for workers, to the authorities and legislative corporations for use in compulsory labor statistics, in welfare work, etc."²⁴

Respecting the working of the Austrian councils, Dr. Hoffman Ostenhof²⁵ says that the "fears of this institution expressed by some are unfounded;" they are developing into a "useful medium between employer and employee."²⁶

D. FURTHER DEVELOPMENTS IN EUROPE

At the ninth Trade Union Congress held in Christiania, Norway, July, 1920, a resolution was passed favoring the creation of

²⁴Ostenhof, Hoffman, "Social Policy in the Republic of Austria," supplement to the *Annals of the American Academy of Political and Social Science*, November, 1921, p. 56.

²⁵*Ibid.*, p. 58.

²⁶*Ibid.*

works councils as a means whereby the workers should be prepared, through greater knowledge of the management of industry, to make the socialization of all industries a success.

The Norwegian trade unions are dominated by the Socialists, as is also the Norwegian Labor Party. These groups are professedly engaged in a fight for a new social order in which the working classes will gain political and economic control. In response to the pressure brought by the workers, a Works Council Law was enacted in Norway, July 22, 1920.²⁷

All public and private concerns employing over fifty workers are included in the scope of the law, "provided such concerns (1) come under the law of September 18, 1915, as to the protection of industrial workpeople, or (2) have for their object the working of railway, tramway, telegraph, or telephone services." The King may extend the law to all concerns.

Works councils of at least two and not over ten members are to be elected by the workers over eighteen years of age in each works. Two years of service and the age of 21 are the qualifications required of members of the councils.

These councils have only an advisory power. Before coming to a decision on certain matters, the employer must consult with the works council. These matters include changes in management which affect working conditions; scales of pay, hours, overtime, piece-work rates, holidays, and other working conditions, unless agreements exist between the workpeople and employer respecting these matters; workshop regulations and additions or changes therein; and setting up or managing of welfare institutions, such as sick funds, and housing. The council has the right to act as conciliator in any dispute between workpeople and the employer, if they involve working conditions or dismissal.

Works councils are provided for in Czecho-Slovakian factories by a law passed by the Czecho-Slovakian Senate, August 12, 1921, which became effective January 1, 1922. It does not apply to state establishments, but to all other establishments employing over thirty people. These councils have functions similar to those provided for in the Norwegian and German laws. Some of their special duties are: the caring for the social, economic, and intel-

²⁷"Works Council in Norway: New Act," *Labor Gazette* (London), August, 1920, p. 423.

lectual interests of the workers, which includes the making of agreements regarding hours, wages, and the enforcement of such agreements; the examining of the pay-rolls of the concern; the enforcement of arbitration decrees and labor laws; the assisting in settling cases of large scale dismissal of employees, not due to working conditions; the maintaining of good relations between employers and employees and among the employees; and the managing of philanthropic utilities within the concern. In establishments employing 300 or more workers, or fifty or more clerks, the council can demand to see the company's accounts. In limited or joint stock companies employing 200 or more workers, the works council is entitled to one representative on the Board of Directors, but such representative cannot vote. A strong demand for works councils has developed in Italy in the past few years, and a law providing for them was, in February, 1921, barely defeated in the Italian Chamber of Deputies.

CHAPTER II

THE NON-UNION COUNCIL MOVEMENT IN THE UNITED STATES

There are over seven hundred industrial firms in the United States which have in operation at the present time some plan for extending to their employees a share in the management and control of the industry. The names given to these plans are almost as numerous as the plans. In the course of this discussion, the terms, "councils," "council movement," or "plans of joint industrial management," are used as convenient general expressions to designate this whole group of joint works councils, joint committees, works councils, shop committees, etc., which are the subject of this study.¹

The essential feature which these many plans have in common is that they all extend to the employees, through their elected representatives, a greater opportunity to exercise a share in the management of their respective industry. This is accomplished either by allowing them direct exercise of authority or greater opportunity to present to those having final authority, their views upon matters directly affecting their welfare. The latter, as is shown later, may be as effective a method of attaining a share in control as the former.

A. EARLY HISTORY OF NON-UNION COUNCIL PLANS IN THE UNITED STATES

It has been suggested that long before the growth of any definite plans for employee representation in management, there were many plants in the United States in which various committees of

¹Examples of these names are: "Cooperative Association," "Employees' Representation Plan," "Conference Plan," "Employees' Cooperative Plan," "Joint Conference Committee," "Mutual Aid Society," "Industrial Partnership Plan," "Industrial Representation Committee Plan," "Representative Industrial Congress," "Plan of Industrial Democracy," "Cooperative Welfare Association," "Plan of Shop Control by Joint Representation," "Industrial Council Plan," "Plant Committee Plan," "Shop Committee Plan," "Plan of Industrial Relations," "Cooperative Management," "Democratic Industrial Government," "Industrial Constitution," "Employees' Conference Committee," "Partnership Plan," "Joint Representation of Employees and Management."

the workers were administering different welfare and benefit association activities. That such committees have existed, and do exist, is perhaps true; but that the definite plans for industrial councils, herein studied, were in any way an outgrowth of the experience with such welfare committees seems to be improbable.

In the course of this study a questionnaire was sent out in which the following questions were asked: "Did you have any committee of your workers sharing in any way in the control or administration of any activities in your industry prior to the adoption of your present plan of employee representation? If so, can your present plan be said to be in any respect a result of your experience with such committees?" Replies were received from sixty-three companies. All but the Filene Co. of Boston answered the latter question in the negative. Only three reported having had any workers' committees previous to their present plan. If these answers may be considered to any degree indicative of the situation as a whole, it may be concluded that the movement toward the adoption of council plans in the United States has been, on the whole, an abrupt change in the labor policies of the firms involved.

One example of a gradually evolved non-union joint council plan in the United States is that of the Filene and Co. department store in Boston, Mass., a large retail store with about 3,000 employees. This plan is also probably the earliest example of a successful non-union council plan in the United States. It began in 1898 with a committee of employees which assisted in the administration of an insurance plan and a medical clinic. New committees were created to carry on other activities after the success of this first one was observed. Education, library, health, and suggestion committees were added in 1899. An entertainment committee was added in 1900, and a clubhouse committee in 1901. Up to this point the employees were sharing only in what is commonly referred to as welfare work. However, in 1901, an important step was taken by the formation of the arbitration board. Still later, committees were formed to handle special subjects, as the one created in 1902 for publicity, and in 1903 for athletics. In 1905, another larger step in the direction of democratic industrial management was taken by the formation of the Filene Cooperative Association Council, which was a legislative body. In

1906, a music committee was formed, and in 1912, a committee on cooperative supply. Finally in 1920, the Filene cooperative association benefit society came into existence.

This sketch of the development of the Filene cooperative association shows that it has gone through a gradual evolution. As the need or advantage of new extensions of power to the employees was seen, and the ability of the employees to shoulder such new responsibilities was demonstrated, the extensions were made and the new responsibilities given. Because it is probably the oldest and at the same time one of the most thoroughly democratic and most successful of non-union plans for joint industrial management in America, the Filene plan is here described at length.

All employees, including salaried officials, by virtue of being employed in the store, are members of the Filene cooperative association, hereafter designated as the F. C. A. The F. C. A. is a "self-governing body operating under a charter, constitution, and by-laws." It elects its own officers by popular vote, and has an executive secretary who gives his entire time to directing the work of the association. He is chosen by, and is responsible to, the F. C. A., but is paid by the company.

The F. C. A. arbitration board is composed of twelve members, elected by and from the employees, with one from each section of the store. Any matter upon which an employee is dissatisfied may be appealed by him to this board. This matter may be a dispute between an employee and the company; between two employees; or between an employee and the F. C. A. In settling all matters brought before this board, a majority vote is final. It is given specific jurisdiction in cases of discharge, wage reductions, transfers, promotion, wages, missing sales, shortages, lost packages, breakages, vacation wages, insurance payments, judgments of the suggestion committee, and disputes between employers. Disputes between an executive of the F. C. A. and the company may, if desired, be sent to a special arbitration committee of three, one being chosen by the F. C. A.; one by the company; and one by these two.

The F. C. A. may "initiate new store rules or modifications or cancellations of existing store rules concerning store discipline, working conditions, or relations, or any other matter, excepting

policies of the business, by a two-thirds vote of the entire membership." The management has the power of veto. The measure can then be passed only by a two-thirds vote of the entire membership of the F. C. A. after at least one mass meeting has been held for discussing this measure.

The F. C. A. council is composed of twenty-three members. This council functions as the legislative organ of the association. Twelve of its members are elected; the other eleven are the four officers of the F. C. A., the four employee members of the Board of Directors, and the presidents of the Men's Club, Women's Club, and Girl's Club. This council may perform the same duties designated above for the F. C. A. as a whole, with the exception that it can pass a measure only by five-sixths vote and any measure must be referred to a referendum vote of the entire association if 4% of the members petition for such a referendum.

There are eleven members on the Board of Directors. The employees nominate six members for this board, and the stockholders of the company choose four from this panel of six. These four employee members have the same powers as the ones representing the employers.

Certain significant facts may be noted in this plan. Although the officers of the company are members of the F. C. A.; can vote; and can hold office, they are in any section numerically weak. They have no assurance, therefore, of any representation on the council or the arbitration board. Moreover, any matter, "excepting business policies," may be the subject of ruling which can be passed over the management's veto by a two-thirds vote of the F. C. A.

Another early example of a non-union council plan was that founded in 1904 by the Nernst Lamp Company of Pittsburg. This plan created a "factory committee" on which the clerical force, the workers, the foremen, and the management were represented. It has long since been abandoned.²

A third instance of a plan for joint industrial control was that instituted in 1907 by the Nelson Valve Co. of Philadelphia. This plan had two bodies which were similar to the "Senate" and the "House of Representatives" of the Leitch plans to be described

²"Works Councils in the United States," published by the National Industrial Conference Board, *Research Report*, No. 21, October, 1919, p. 5.

later. In this case they were called the "Upper House," and the "Lower House." The "Upper House" was composed of foremen, and the "Lower House" of representatives, elected by the men in each shop. This plan has also been abandoned.³

In 1911, the Philadelphia Rapid Transit Co., which was at that time on the verge of bankruptcy, passed over to a new management. The new management organized what was called "The Co-operative Welfare Association" among the 10,000 employees of the company, as a definite effort to gain their cooperation, which it considered to be the first and most important step toward success.

In 1912, the Milwaukee Electric Railway followed the example of the Philadelphia Rapid Transit Co. and organized what they called an "Employees' Mutual Benefit Association" which was similar to the Philadelphia plan.

In 1913, a new factor appeared, destined to play an important role in the future of the movement toward joint industrial management in the United States. This new factor was the advent of an "industrial evangelist," preaching a doctrine of industrial democracy. Since 1913, John Leitch has installed many plans of joint industrial management, and many of them have been very successful. Because of the important role played by Mr. Leitch in the furthering of the movement toward joint industrial control, and because the Packard Piano Co. plan is one of the most successful of the Leitch plans, and is fairly typical of all that he has installed, it is here described at length. The story of the adoption of the Packard Piano Co. plan is typical of what has taken place in a score or more of other plants where Mr. Leitch has installed similar plans.

Late in the year 1912, the Packard Piano Co. had serious labor troubles, leaving the plant heavily burdened with a load of ill will, suspicion, and mistrust on the part of its working force. The efficiency of the plant was very low. The management called in Mr. Leitch to establish its industrial relations policy upon a sound basis and gain the good will and cooperation of the men. Leitch studied the plant and conditions; became acquainted with the men; held several mass meetings; and proposed his plan of joint industrial management, which the men voted to adopt.

³*Ibid.*

He proposed that the plan be based upon the four corner stones: Cooperation, Justice, Economy, and Energy, and that the capstone be Service. These are the principles to which this "industrial evangelist" always strives to convert the management and men before he installs his plan of industrial democracy. The plan which he installed in the Packard Piano Co. is as follows:

There are a House of Representatives, elected from and by the workers; a Senate, elected from and by the foremen; and a Cabinet, composed of the officials of the company. Certain qualifications as to age, citizenship, length of service with the company, etc. are required of the voter, and higher qualifications of the same nature of the one holding office as a representative or Senator. Either House can initiate measures, there being no limitation to the matters with which they can deal. In order to become a law, a measure must pass both Houses and be approved by the Cabinet. This power of veto on the part of the management has seldom, if ever, been used in the many Leitch plans in operation, and has, therefore, not been as significant a factor as might be assumed. Under the operation of this plan, cooperation, good will, and a resulting tremendous gain in efficiency are reported in extravagant terms by the Packard Piano Co. officials.

It is not intended to imply here that all the plans known as the Leitch plans are in every detail like the one described above. In some plans there is no Senate; in others, the Senators are elected from the men. In some plants joint committees from the House, Senate, and Cabinet, or House and Cabinet, do much of the important business. Each plan has always been adapted to the needs of the particular plant.

In 1914, four plans of joint industrial management were adopted: one by the Geometric Tool Co. of New Haven, Conn.; one by the Pilgrim Laundry Co. in Brooklyn, N. Y.; one by the White Motor Co. of Cleveland; and another by the Printz-Biederman Co.

In 1915, the Colorado Fuel and Iron Co. adopted a plan as a result of the disastrous strike of 1915. Following the strike, the Rockefeller Foundation was requested to make a study of industrial relations and work out a plan for establishing these relations upon a sound basis. A plan for joint industrial manage-

ment was worked out and in October, 1915, was adopted in mines located in Colorado and Wyoming. These mines employed about 14,000 workers. The plan was also adopted in the company's steel works in Colorado.

Other plans adopted in 1915 were those of the Joseph Feiss Co. of Cleveland, the Plimpton Press, and the Nunn, Bush, and Weldon Shoe Co.

In 1916 and 1917, according to records at hand, there were at least four council plans adopted. These were the plans adopted by the Harris Engineering Co. of Bridgeport, Conn. (1916) and the Davis Coal and Coke Co. of Cumberland, Md. (1916), and the Leitch plans installed in the William Demuth and Co.'s plant in New York (1917) and the Sidney Blumenthal and Co.'s plant in Shelton, Conn. (1917).

B. THE PERIOD OF RAPID EXPANSION

The growth of non-union joint council plans was very slow up to the end of 1917. The year 1918 marks the beginning of a period of rapid expansion in this movement, which rapid growth has continued up to the present time.

1. *Rapid Increase of Voluntary Plans.* To the year 1918, all plans had been voluntarily adopted by employers as a possible solution to the problem of gaining improved industrial relations. Many of the plans formed in 1918 and 1919 were also adopted voluntarily by employers as a means of settling their labor troubles. The rapid increase in the number of these voluntarily adopted plans seems to have been due very largely to three causes. In the first place, labor problems were becoming more and more acute all through the country. Industrial unrest was at its height, and the number of strikes was increasing rapidly. Labor turnover was a serious problem to many concerns. Employers were grasping at any possible solution to these problems. A second influence was the widely advertised success of a number of the joint council plans already in existence. The third cause was the activity of certain government boards which had helped to advertise and recommend the idea of joint industrial management.

2. *Work of the National War Labor Board.* In the spring of 1918, when the problem of labor unrest had grown quite acute and there was much inefficiency because of strikes and high labor

turnover, the President of the United States created the National War Labor Board. This Board was to "act as a court of last resort in industrial disputes in which war production was threatened." The creation of this Board and its activities are, therefore, properly regarded as the result of the desire to gain the cooperation of labor to the end of more efficient production and more effective prosecution of the war.

This Board early adopted the policy of furthering the formation of joint committees, composed of representatives from the management and representatives elected by the men, in the various establishments coming under their jurisdiction. In accord with this policy, many awards requiring such committees were handed down. The following excerpts are typical of the provisions made in the National War Labor Board's awards for the formation of joint committees:

"The election by the workers of their representative department committees to present grievances and mediate with the Company shall be held, during the life of this award, in some convenient public building in the neighborhood of the plant, to be selected by the Examiner of this Board assigned to supervise the execution of this award, or, in case of his absence, by some impartial person, a resident of Pittsfield, to be selected by such Examiner.

"The duties of the department committees shall be confined to the adjustment of disputes which the shop foremen and the division superintendents and the employees have been unable to adjust.

"The department committee shall meet annually and shall select from among its number three employees who shall be known as the committee on appeals. This committee shall meet with the management for the purpose of adjusting disputes which the department committees have failed to adjust.

"It is understood by employer and employees that a dispute involving one or two persons shall be first taken up by the individuals with their foremen. Disputes involving more than two persons may be taken up first with the foremen, or by the department committee, as the persons interested may elect."⁴

⁴*National War Labor Board Award and Rulings*, in reference to the General Electric Company, Pittsfield Works, pp. 10-11.

These passages show that the National War Labor Board awards provided only in a general way for the creation of joint committees. A member or representative of the Board was generally sent to assist in the study of the local conditions, and in forming a plan adapted to local needs.

The first award of the National War Labor Board providing for the creation of committees was in the case of the General Electric Company's Lynn Works. That award provided:

1. For the election of department committees by all workers in a department; each department committee to meet with representatives of the management to settle disputes.

2. That these department committees meet and choose a committee of three to meet with the management as a joint committee on appeals.

3. That the duties of these committees be "confined to the adjustment of disputes."

This general award was carried into effect under the supervision, and with the assistance, of a representative of the War Labor Board. The plan, as worked out to fit the local needs in this case, has the following main provisions:

1. Each plant is divided into "sections." Each section contains 200 workers.

2. Each section elects semi-annually two representatives.

3. All employees in service three months or over can vote.

4. Any employee, who is an American citizen over 18 years of age able to read and write the English language, and who has had at least one year of service with the company, is eligible to hold office as a representative.

5. These two representatives constitute a "Committee on Fair Dealing."

6. The "Sections" are grouped into "shops." The representatives, elected by the sections in a shop, meet and elect three of their members to a joint shop committee on which there are three members of the management.

7. All the elected representatives in the concern choose four workers to serve on a general joint committee on which there are also four representatives of the management.

8. Several general joint special committees are created to deal with special matters.

9. All matters which the workers or management desire adjusted are considered by these committees. The joint shop committee can settle a matter if its decision is satisfactory to all concerned. If not, the matter can be appealed to the general joint committee and there settled by a decision satisfactory to all concerned, or by a unanimous vote which is final. If the general joint committee fails to settle any matter, it is referred to the management for consideration.

During the years 1918 and 1919, plans for joint committees were adopted under the supervision of the National War Labor Board by approximately one hundred firms.

3. *Work of the Shipbuilding Labor Adjustment Board.* Somewhat similar to the work of the National War Labor Board was the work of the Shipbuilding Labor Adjustment Board, which was organized in 1917 as a means to gain a "fair and honest adjustment of individual and group interests in such a way as to secure from labor the heartiest cooperation in meeting the emergency, and willing effort to bring about maximum output of ships."

This Board was composed of three members: a representative of the Emergency Fleet Corporation, a representative of the public, and a representative of organized labor. It was approved at a meeting at which nearly all of the unions involved in shipbuilding were present. It was given final authority to adjust industrial relations between employers and employees engaged in "construction or repair of shipbuilding plants or of ships or shipyards under the United States Shipping Board, Emergency Fleet Corporation, or with said Board." In practice it was called to adjust matters for many private concerns doing government work.⁵

In many of the shipyards, shop committees of various types were found by this Board to be already in existence. However, in some yards the Board found much objection to the creating of shop committees. "Partly because of these objections, provisions for committees were omitted from some of the early awards. Therefore, at the time of the October, 1918, awards,

⁵"History of the Shipbuilding Labor Adjustment Board," *Bulletin of the U. S. Bureau of Labor Statistics*, No. 283, p. 8.

shop committees were functioning with varying degrees of success in some of the districts, whereas in other districts there were no committees at all.

"The peculiar circumstances created by the war resulted in practically complete organization of shipyard workers. In the absence of shop committees complaints came to be handled through local officers of the union, and a situation developed in yards where there had been no committees in which employers were anxious for committees, and union representatives were reluctant to have them introduced.

"As above noted, the October, 1918, award for the Atlantic, Gulf, and Great Lakes territories contained a blanket provision for shop committees in all yards. The award provided for the election by secret ballot of committees made up of three members for each of the different shipyard crafts with a further provision that the chairmen of the craft committees should constitute a joint shop committee. The October award was effective in introducing the shop committee system into practically the whole shipyard industry."⁶

The essential provisions of this October award may be summarized as follows:⁷

1. Employees of each craft or calling in any shop or yard to elect a committee of three from their own numbers.
2. Committee members to be elected by secret ballot; to hold office for six months; and to be eligible for re-election.
3. The chairman of each of these craft shop committees to be members of a joint shop committee.
4. The joint shop committee to elect five of its members to form an executive committee to negotiate with the representatives of the management.
5. Grievances to go first to the craft shop committee and the foreman. Failing of an adjustment, then to the shop committee and the superintendent. If the matter still remains unsettled, the executive committee of the joint shop committee can take it up with the superintendent or the high officials of the company in joint conference.

⁶*Ibid.*, p. 63.

⁷Wolfe, A. B., *Works Committees and Joint Industrial Councils*, pp. 117, 118.

6. Disputes which cannot be settled by these methods, to be submitted for arbitration by the district examiner.

These committees at first met much opposition in some yards where the customary procedure was to settle all matters needing adjustment through the union officials. But "unionization in the great majority of the yards progressed so rapidly that at an early date the committees came to be made up almost exclusively of union men."⁸ Many of the committees created by this Board thus became union, rather than non-union committees. However, the basis for election was not union membership; any employees were eligible. Therefore in cases where the men were not all organized, the committees were non-union in the sense in which that term is here used.

The scope and functions of these committees were completely limited because of the detailed specifications contained in the Board's awards respecting wages, hours, conditions of work, etc. Nevertheless, the multiplicity of complex problems arising from the abnormal war situation "gave these committees nearly as great opportunity for constructive work as they would be likely to obtain in general industry under normal conditions."⁹

C. THE CONTINUED GROWTH OF THE COUNCIL MOVEMENT

The main developments in the movement toward non-union committee plans have now been traced to the year 1920. Three outstanding characteristics of the movement during this early period may be noted:

1. It had been a movement fostered almost entirely by employers and the government as a means to gain industrial peace, the good will and cooperation of labor, and increased efficiency.

2. These measures were taken in the face of abnormal emergency conditions, in a period when the laborer had the upper hand, and the employer was anxious to conciliate differences with him; and also in a period when there was much industrial unrest and resulting inefficiency.

3. The desire to check the rapid spread of unionism was also an important factor.

The question oftentimes raised in the last three years has been whether or not the council movement would die out in the face

⁸"History of the Shipbuilding Labor Adjustment Board," *Bulletin of the U. S. Bureau of Labor Statistics*, No. 283, p. 66.

⁹*Ibid.*, pp. 65, 66.

of new conditions which have developed since the war. Many have prophesied that when the employer gained the upper hand he would no longer offer to labor any representation upon councils and committees to share in the control of industrial relations, but would eagerly hurry back to pre-war autocratic industrial management.

This opinion implied two things: first, that employers already having council plans would abandon them; and second, that new ones would not spring up. Neither of these assumptions has proved true. A number of council plans have been abandoned, it is true. Many of the awards of the War Labor Board and the Shipbuilding Labor Adjustment Board were necessarily of a temporary character, applying as they did primarily to war industries in which serious depression would naturally follow after the war, and being imposed as they were, in many cases, on unwilling employers and antagonistic union laborers. However, even in the case of these plans, it seems that the majority of them have been retained. Letters sent out to fifty firms having plans imposed by government boards revealed that only twelve have been abandoned.

The most significant fact remains to be noted. The movement, instead of retrogressing in the period of depression when employers have again held the upper hand, has gained momentum. It may be safely stated that the number of plans in operation has more than doubled since 1919. The National Industrial Conference Board, which has followed the growth of the movement among its members, has estimated that while in 1919 there were 225 plans in operation, there are now at least 725.¹⁰

Turning to the large number of voluntarily adopted plans cited above, only an insignificant number of these have been abandoned. Inquiry has been made into the present status of over one hundred such plans. The management in the vast majority of firms having these plans has been found enthusiastic in its praise of the council system.

It is also significant to notice that many of the firms corresponded with have apologized for the cursory nature of their replies, and have explained that the inquiries coming to them

¹⁰*Experience with Works Councils in the United States*, research report, National Industrial Conference Board, No. 50, May, 1922, p. 1.

from all parts of the United States and foreign countries concerning their council plans have been so numerous that they cannot take the time to answer them all adequately. A very considerable number, probably fifty or more, have sent printed pamphlets which have been prepared to meet this demand for information.

There are five major causes of this recent rapid growth of the non-union council movement in the United States. In the first place, employers have found that these plans, evolved to gain the good will and cooperation of labor in a period of emergency, are a success. Since the good will and cooperation of labor and the resulting efficiency are equally desirable in peace or war, they have assigned to such plans a permanent place in their system of personnel management.

A second cause is to be found in the widespread advertisement of the success of many of the council plans adopted during the war and immediate pre-war periods. A glance at the bibliography appended to this study will reveal the profusion of magazine articles on this subject which have been broadcasted during the last four or five years. These numerous articles have almost unanimously proclaimed the virtues and great success of such plans.

The phenomenal growth of the science of personnel management in American industries in recent years has been a third contributing factor. The various non-union council plans herein studied are typically a part of the firm's system of personnel management. Rapid advance has been made in this field, and there has been a resulting change in the attitude of American business men toward the problem of the scientific application of the human factor in production. This has resulted in a tremendous increase in the number of firms having a personnel department with a personnel manager at the head, and in the number of industrial engineers whose services are regularly obtained by individual firms. This expanding group of personnel experts and industrial engineers has quite generally favored the principle of more democratic industrial management through the medium of shop committees and works councils.

In the fourth place, industrial unrest, always the fundamental force impelling employers to greater efforts in the direction of

scientific personnel management, was present oftentimes in threatening proportions during the post-war reconstruction period.

Finally, there is no doubt concerning the fact that the non-union council movement in the United States has been largely an anti-union movement. The adoption of employee representation plans has been, in many cases, a move which has had as its immediate purpose either the undermining of existing unionism in the industry or plant, or the avoidance of unionism which appeared imminent.¹¹ Moreover, these councils have generally been a success in accomplishing this purpose. When this purpose exists a period like the present, in which the employer has the upper hand in the labor situation, is the most appropriate time for initiating council plans. The success of certain large packing concerns in breaking the strength of the unions by the adoption of a council plan is a case in point.

D. DESCRIPTION OF NON-UNION COUNCIL PLANS IN THE UNITED STATES

One outstanding characteristic of American council plans is their lack of uniformity. The majority of these have been adopted voluntarily, and without the influence of any unifying or dominating force. The result has been that there are almost as many types of plans as there are plans in existence. A very slight divergence in the wording of a constitution may suffice to produce important differences between two otherwise similar plans. As a consequence of these facts, any attempt to group all council plans under a certain broad classification, such as the "War Labor Board Type," the "Shipbuilding Labor Adjustment Board Type," "Company Unions," the "Governmental Type," or the "Committee Type," is very unscientific and misleading.

The National War Labor Board merely suggested the general outlines of plans, and left it to the companies to adapt the plan to the local need. There can hardly be found any two of the so-called "Governmental Types" that have all the three bodies: House, Senate, and Cabinet; that have these elected on a similar basis; or that provide for the important work to be carried on in a similar way. For example, a plan may have both a House and

¹¹See Chapter VI.

Senate, but also provide for joint committees which perform all, or most, of the important work. The essential features of such a plan are radically different from one in which the House and Senate perform the important work, subject to a veto of the management.

Nearly all of the so-called "Company Unions," or "Employee Associations" have been so named because there exists a definite organization of all the employees. However, very few of these provide for any meetings other than those of the elected councils or committees. The result is, therefore, the same as in other plans which have no definite general organization, but in which all employees vote for council or committee members. Where there does exist an active organization of all employees, it may be a very important feature of the plan, but to indicate that all plans having such an organization are similar in their most essential features would be very far from the truth.

Some of these titles mentioned do have historical value, in that they indicate the origin of the plan. The so-called Governmental or Leitch plan, the National War Labor Board type, the Ship-building Labor Adjustment Board type, and the Company Union type (Filene's) have been described in the historical sketch above.

1. *Description of Council Plans According to Form.* At the beginning of the present chapter reference was made to the great variety of names given to American non-union council plans. It is also true that there exists a tremendous variation in the use of terms applied to the various divisions and subdivisions. The result is that this prevailing terminology conveys no reliable information as to the character of the respective plan. It is highly desirable, therefore, that more uniformity in the matter of terminology be developed.

In the course of this investigation, a chart was made of the form of organization of one hundred American non-union council plans. From this chart was derived the following terminology which describes with considerable accuracy the most important functioning representative bodies provided for in the plans included:

General Joint Council (representatives of workers and management), comprising several works or plants under one management. Example: International Harvester Co.'s 21 plants.

Joint Works Council (representatives of workers and management), and a Works Council (representatives of workers only), for an entire works or plant. Most companies have but one plant.

Joint Shop Committees (representatives of workers and management), and Shop Committees (representatives of workers only), for a shop or other minor division of a works, such as a department or section.

Joint Special Committees (representatives of workers and management), and Special Committees (representatives of workers only), comprising committees created to handle specific subjects.

It has been found impossible to make any simplified classification of council plans which is based upon this or any other available terminology. In fact, of the many councils investigated, hardly any two have essentially the same type of organization. They all have some combination of the forms of representative bodies designated in the terminology outlined above, but only a very few have the same combination. Therefore, the following description of council plans cannot be offered as a classification in which a large number may be included; it is offered as an accurate description, stated in uniform terminology, of the form of organization of twelve local non-union councils. From this description there may be obtained an adequate idea of the general character of American non-union council plans.

TYPICAL PLANS

International Harvester Co.

Form: Joint Works Council and General Joint Council

The joint works council is composed "of representatives elected by the employees, and of representatives appointed by the management." The latter must never exceed the number of employee representatives. There is one employee representative for each 200 employees.

If matters affecting several works arise, the president calls together the general joint council which is composed of two or more representatives chosen by and from each works council, and management representatives appointed by the management. There is one employee representative for each 1,000 employees or fraction thereof. There must never be less than two from each works.

Standard Oil Co. (Indiana)

Form: Joint Works Council, General Joint Council, and Joint Special Committees

The joint works councils of these typical plans are composed of representatives elected by the employees, and management representatives appointed by the management. The number of the latter may be equal to, but must never exceed, the number of employees' representatives.

According to the plan of the Standard Oil Co. (Indiana), each plant is divided according to departments and natural divisions. One representative is allowed for each 200 men in works that have in their employ over 2,000 workers. In those having less than 2,000 there is one representative to each 150 men.

The general joint council is composed of all employee representatives of the joint works councils of each works, the chairman of the Board of Directors, the president and other officers of the company, as may be directed.

This company provides that joint special committees be formed by the joint works council, and be composed of employee and management representatives, the latter equaling, but not exceeding, the number of the former.

Midvale Steel and Ordnance Co., Cambria Steel Co., and subsidiary companies

Form: Shop Committees, Works Council, and General Joint Council

In this plan the shop committees are composed of representatives elected by the men in each shop. There is one representative to each 300 men.

The works council is composed of employee representatives elected by and from the members of the shop committees on the basis of one representative for each 3,000 employees. Each works council must have at least three members.

The members of the general joint council are the general superintendents of all the plants of the company and all members of the works council of each plant of the company. In this body, one vote is cast for the company and one for the employees. The president of the company and other officials may meet with the council at any time.

S. F. Bowser and Co.

Form: Works Council, Joint Works Council, and Joint Special Committees

The joint works councils of these companies are composed of representatives elected by employees, and of appointed management representatives.

This plant is divided into ten sections, with representatives elected from each fifty employees. The number of management representatives "must not be more than, nor less than half of, the number of employee representatives."

This company has four joint special committees: the joint committee on rules, procedure and elections, the joint committee on adjustment, the joint committee on industrial conditions, and the joint committee of final appeals. The two first committees have six members each. Three are elected by the employee representatives and three by the employer representatives of the joint works council. The joint committee on industrial conditions is composed of ten members: five elected by and from the employee representatives of the joint works council, and five by and from the employer representatives of this council. The joint committee of final appeals has five members. Two are appointed by the president of the company; two are elected from employees by the employee members of the joint works council; and the fifth is an employee chosen by these four.

Proctor and Gamble Co.

Form: Works Council, Joint Works Council, and Joint Special Committees

The members of the works council are elected by the employees in the different departments or sections of the plant. The constitution of the Proctor and Gamble Co. provides that the works council shall be elected on the basis of one representative to each fifty employees. In this company an executive council is formed in order to obtain a small governing body. It is composed of the chairman and vice-president of the works council and five employee representatives appointed by the chairman.

The joint works council is composed of the employee members of the works council and management representatives appointed by the management; however, the number of the management representatives must not exceed one-half the number of employee representatives.

The joint special committees are composed of five members: four employee representatives, and one management representative appointed by the chairman of the executive council.

Intertype Corporation

Form: Shop Committees and Joint Works Council.

In this plan there is one shop committee (department committee) for each department, the representative on the committee being elected by the employees of the department, on the basis of one for each twenty-five employees.

The joint works council is composed of the chairmen of the different shop committees; members of the foremen's committee, which is a committee of five foremen, elected by the foremen in the plant; and five management representatives, appointed by the management.

Westinghouse Electric and Manufacturing Co.

Form: Joint Shop Committees, Joint Works Council, and Joint Executive Committee.

The members of the joint shop committees are elected by employees in the precincts into which the departments are divided, the number elected being in proportion to the number of employees. The number of management representatives may equal, but not exceed, the number of employee representatives.

The joint works council (works joint conference committee) consists of all the members of the joint shop committees and all district committeemen. The latter are elected by and from the factory clerks in the various districts, on the basis of one to each district.

This plan also provides for a small joint governing body, called the executive committee, composed of twelve employee representatives, elected by and from the members of the joint works council; the same or a less number of management representatives, appointed by the management; and one factory clerk, elected by the factory clerk district committeemen.

Bethlehem Steel Corporation

Form: Works Council, Joint Special Committees, and Special Committees

The works council must never have less than ten members. Its members are elected on the following basis:

<i>No. of employees in plant</i>	<i>No. of representatives</i>
Under 1500.....	One representative for each 100
1500 to 10,000.....	One representative for each 200
Over 10,000	One representative for each 300

This company has fourteen special committees (employees only) on the following subjects: rules; ways and means; safety and prevention of accidents; practice methods and economy; employees' transportation; wages, piece work, bonus, and tonnage schedules; employment and working conditions; housing, domestic economies and living conditions; health and works sanitation; education and publications; pensions and relief; athletics and recreation; continuous employment; and condition of industry. These committees are composed of five members each, elected by and from the members of the works council. There is also a general committee composed of the chairman and secretary of the works council.

The joint special committees of this plant are formed by adding to the special committees management representatives appointed by the management, whose number may equal, but not exceed, the number of employee representatives. The joint general committee acts as a committee on appeal.

*Bridgeport Brass Co. and The Standard Brass
and Copper Tube Co.*

Form: Joint Shop Committees, Joint Works Council, General
Joint Council, and Joint Special Committees

In this plan, there are two bodies which may be appropriately called joint shop committees. These are the division committees and group committees. Before an explanation of the constitution of these can be given, it is necessary to explain the basis of representation. The plant is divided into departments, with one representative elected for each 100 employees. There must be at least one representative to each department. The employee members of the division committees are the representatives elected by those in the different divisions. An equal number of employer representatives are appointed by the management. The group committees are composed of all the duly elected department employees' representatives, and an equal number of appointed management representatives.

All duly elected employee representatives in each works and an equal number of employer representatives, appointed by the management, compose one of the joint works councils of this plant, the plant committee. The other joint works council is the executive committee, a smaller body of ten members. Five of these members are elected by and from employee representatives of the joint works council, and five appointed by the management.

Matters involving several works may be discussed by the general joint council (general committee), consisting of all elected employee representatives of each works and an equal number of employer representatives appointed by the management.

The joint special committees are composed principally of members of the joint works council. Some may be employees who are not representatives. In this case they become associate members of the joint works council and general joint council with no power to vote.

Elgin National Watch Co.

Form: Works Council and Joint Works Council

The works council of the Elgin Watch Co. is composed of nineteen employees, one elected from each department in the factory. The joint works council is composed of the members of the works council and management representatives.

The Remington Arms Union Metallic Cartridge Co., Inc.

Form: Shop Committees, Joint Shop Committees, Works Council,
and Joint Works Council

This plan is an example of the Bridgeport Employees' Committee plan which is used by a number of companies in Bridgeport, Conn.

The plant is divided into departments. The shop committees (employees' departmental committees) are committees of three representatives for each department, elected by the employees in that department.

The joint shop committees are composed of shop committeemen and employer representatives appointed by the management, the number of the latter being equal to, but not exceeding, the number of employee representatives.

The governing bodies, properly classified as works councils, are the employees' general committee and the executive committee.

The employees' general committee consists of the chairmen of all the shop committees. The executive committee is composed of five members. For this election the plant is divided into five sections, one executive councilman being elected by the employees' general committeemen in each section.

The members of the executive committee and an equal number of employer representatives compose the joint works council.

General Electric Co., Lynn Works

Form: Joint Shop Committees, and Joint Special Committees

The method of electing employee members of the joint shop committees differs somewhat from any method as yet given. These members are chosen by elected representatives. The works is divided into sections of about 200 employees. These are then grouped into shops, each shop being composed of about three sections, or 600 employees. Two employees are elected from each section, making six representatives to a shop. These shop representatives, in turn, choose three of their own number to be members of the shop committee to which three employer representatives are appointed by the management.

This plan has eight joint special committees. These are: committees on routine, procedure and elections; on rehabilitation of disabled soldiers or sailors; on public meetings within the plant; on safety; on sports; on education; an advisory committee on the works paper; and a committee on adjustments.

In addition to these types, there is a group of more or less similar plans which have been oftentimes classed as the "governmental type." The original plan of this type had a works council, composed of representatives of the men in a whole works or plant, called the House of Representatives; a Senate elected by and from the foremen; and a Cabinet, composed of the officials of the company. Few plans of this character exist now. Many of the earlier ones have abolished the Cabinet; some have discarded the Senate; and others have made both House and Senate into works councils, elected by the workers only, or the workers and the foremen. In many cases the real work of these plans is carried on in joint works councils, composed of representatives from the House, Senate, and the Cabinet, and in joint special committees which are similarly formed.

DESCRIPTION OF PROCEDURE, FUNCTIONS AND AUTHORITY

The most important feature of the council plans are those relating to procedure, functions, and authority. For convenience in dealing with these features, provisions for final settlement have been made the basis for classification. There are four typical methods of final settlement: settlement by arbitration; settlement by the manager or some committee of officials; settlement by a joint committee; settlement by the joint works council.

1. *Settlement by Arbitration.* Fifty-two plans studied come under this classification. Thirty of these have the following method of arbitration: If the highest representative body in the line of procedure can reach no agreement, whether by a majority or a unanimous vote, the members choose one arbitrator. However, if no decision can be made concerning this arbitrator, one is chosen by the employee representatives, and one by the president or management representatives. If these two cannot agree, they choose the third arbitrator. The majority vote of these three is final.

In eight of the plans the constitutions provide no special method for arbitration, saying only that if the last representative body cannot reach an agreement, the matter will be given over to arbitration.

Twelve of the plans provide for a definite outside body making the final decisions if the councils cannot agree or another method of arbitration cannot be agreed upon.

In the International Harvester Co. plan there is no limitation to the subjects that may be taken up by the joint works council and general joint council. All matters requiring adjustment, whether they be grievances brought up by one employee or a group of employees, or matters taken up by the joint works council on its own initiative, may be discussed and voted on in the joint works council. If a majority vote of each group of representatives (employee and management) is reached, a recommendation is given to the superintendent for carrying out the ruling. The superintendent may do so or he may refer it to the president who either orders it carried out or gives it over to further consideration. However, if the vote in the joint works council is a tie, the matter is referred directly to the president, who pro-

poses a final settlement or refers it to the general joint council. But if his decision is not satisfactory to the persons involved, he refers it to the general joint council. If the president decides not to refer it to the general joint council, or the vote of that body is a tie, it is submitted to arbitration.

In the plan of the Colorado Fuel and Iron Co., the joint works council and the general joint council may discuss all matters of mutual interest. Questions of welfare are especially dealt with. The management of this company has full power to hire and discharge, and to manage properties, but the fairness of methods used in carrying out these rights may be considered by the representative governing bodies of this plan.

In this plan it is the joint committee on cooperation, conciliation, and wages that has the greatest authority when dealing with all matters that may arise for settlement. The authority of this committee is even greater than that of the executives. In case of a grievance, a settlement may be made without an appeal to the joint committee, for the matter must go through the foreman and superintendent before being appealed to the manager, general manager, and president in the order named. If a satisfactory settlement is not made by the officials, the matter is taken up by the committee on cooperation, conciliation, and wages. The decision of the majority of this committee is final. However, if no decision is reached, with the approval of the majority there is brought in an umpire whose decision as a third party is final. If neither a majority vote of the committee nor a decision on the choice of an umpire can be reached, it is sent to arbitration as described, provided this course is agreeable to the complainants. If it is not agreeable to them, then the case may be investigated by the State Industrial Commission of Colorado. This last step applies only to those working in the Colorado mines.

In the Midvale Steel and Ordnance Co. plan, the channel for deciding grievances, or matters initiated in the councils, is through the works council and general joint council. If a grievance is brought up by an employee it is discussed first with the foreman or superintendent. From him it passes to the works council. If the works council thinks any grievance a worthy one, it refers it to the general superintendent, who meets with the committee for settling the matter. If the settlement suggested by the

general superintendent is not acceptable to a majority of the works council, the matter is referred to the general joint council where the employees and employers vote as separate units. If this council cannot agree, it is given over to arbitration.

In the plan of the Nunn, Bush, and Weldon Shoe Co. all matters needing adjustment go to the works council which tries to settle them. If the parties involved are not satisfied with its investigation and decision, the matter is sent to the joint works council which acts as the governing and judicial body of the plant. On any question originating in the works council on which the members cannot agree, the same procedure may be followed. If the joint works council can reach an agreement, its decision is final; if not, the matter is sent to arbitrators.

This council has a peculiar authority given to it. After due investigation it may require the discharge of employees. Also no employee can be discharged by the management until such order has been approved and sanctioned by the joint council.

The Bethlehem Steel Corporation plan provides that the special committees and joint special committees shall consider some of the most important questions, as wages, hours, etc. The constitution provides a channel for deciding any matter that may arise, whether it be a grievance by an employee, or matters brought up by the councils or committees. The method of procedure is through the foreman, superintendent of the department, management's representative, and finally, to one of the superior officers of the company. The last named may try to decide it, or if the parties involved agree, he may refer it to proper joint special committees. If no settlement is reached, it is sent to the general joint committee on appeals. If this committee cannot agree, notice of such disagreement is sent to the president of the company who confers with the committee concerning arbitration. If he and a majority of this committee agree the matter is given over to arbitrators.

The second type of plans which have final settlement by arbitration, but in which no definite method is given, is illustrated by the plans of the Dennison Manufacturing Co., and the Dutchess Bleachery, Inc.

The general works committee, which is the larger of the two works council bodies of the Dennison Manufacturing Co., is

merely an advisory committee. It discusses factory problems and regulations and makes recommendations to the management. More authoritative power is given to the central committee. It may review all grievances or cases of discharge sent to it after having been referred to the foreman, departmental representatives, divisional representative, and division superintendent.

If this committee reaches a decision, that decision is final and the grievance cannot be reopened except at the request of the general works committee. If no settlement can be made, the matter is referred directly to the management. If the management is not able to reach an agreement, arrangements for arbitration are made. Group grievances arising in this company are brought up by the appropriate department or divisional representatives. The appeal then goes directly to the central committee.

The works council (board of operation) is the first body to which any matter for adjustment may be taken. It may confer with the local management concerning the matter to be adjusted, and if no agreement is reached in this way, the matter is then referred to the joint works council (board of management). It is provided that, whenever necessary, a case may go to arbitration.

The Philadelphia Rapid Transit Co., Intertype Corporation, and Standard Oil Co. (Indiana) are examples of the third type of settlement by arbitration. In these plans an outside body is the arbitration board.

In the plan of the Philadelphia Rapid Transit Co. all matters needing adjustment must first be taken up in the joint branch committee. Appeal may be made to the respective joint department committee, and if the matter is not settled there it goes to the general committee. If no agreement is reached by this committee, the matter is settled by arbitration. In any of these committees final settlement of any matter can be made by a majority vote on each side.

There is a special provision made concerning arbitrators. If the two chosen by the general committee for employees and the general committee for employers cannot agree on the third party, the Provost of the University of Pennsylvania, the Chairman of the Public Service Commission, and the President of the Chamber of Commerce are asked to serve as additional arbitrators.

The shop committees of the Intertype Corporation cooperate and consult with the management on matters directly affecting labor and production in their respective departments. All matters that need adjustment can be brought up before any shop committee. If the members think the case is worthy, they refer it to the works manager. If the settlement is not satisfactory to the shop committee it may take an appeal to the joint works council. If no appeal is taken, the matter may be considered as settled. If the matter reaches the joint works council and the council cannot settle it, it is brought before the president of the corporation. If no settlement can be reached there, the management may offer arbitration. In case a method of arbitration cannot be agreed upon, settlement is made by the Arbitration Committee of the Chamber of Commerce of the state of New York.

The joint works council and general joint council of the Standard Oil Co. (Indiana) are advisory bodies. They may discuss and make recommendations to the management on such questions as wages, hours, employment, works practice, living conditions, etc. All matters needing adjustment may be taken to the joint works council. If it is a grievance, it must have been discussed first with the foreman, superintendent of the department, and assistant director of industrial relations. If the joint works council cannot agree on a settlement, the matter is referred to the president of the company who, with the employee representatives of the joint works council, decides on the best method for arbitration. If they cannot agree on a suitable method, an appeal is made to the Secretary of Labor at Washington.

2. *Settlement by the Manager or a Committee of Officials.* Companies having plans that are examples of this type are: Procter and Gamble Co., General Electric Co. Lynn Works, Hardwick and Magee Co., Sprague Electric Works, Remington Arms Union Metallic Cartridge Co., and Reliable Stove Co.

The executive council, the smaller of the two works councils of the Procter and Gamble Co., considers subjects that pertain only to the welfare of the employees. The duties of the other bodies are those involved in gaining settlements in all matters that need adjustment.

The works council receives any matter that is referred to it after it has gone to the foreman. If this council cannot settle the

matter, it is referred to a special committee appointed by the chairman of the works council. The committee cannot make decisions; it only investigates the case and makes recommendations to the joint works council. The decision of the joint works council is binding if a majority vote of each side of the council can be reached. If no decision is reached, the matter is referred to the committee on appeals, which is composed of the plant superintendent, general superintendent, and president of the company. The decision of this committee is binding.

In the plan of the General Electric Co. Lynn Works, each joint shop committee may investigate and make decisions on any matter referred to it by an employee, after he has discussed it with the foreman. If the employee is not satisfied with the decision of the joint shop committee, and if this decision has not been made by a unanimous vote, he can carry it to the manufacturing engineer or department head. If he gains no satisfaction there, he refers it to the general joint committee on adjustments. If the decision of this joint committee is unanimous, the matter is settled. If it is not unanimous, the employee may take the matter on up to the manager. The right of appeal is valid only if the employee first brings up the matter.

3. *Settlement by a Joint Committee.* In this group no method for arbitration is provided. The employees of the companies having this manner of settlement must be content with a joint special committee as the ultimate body to which it can appeal. The plan of the S. F. Bowser Co. is an example of this group.

In this plan, any matter brought up for adjustment is appealed to the joint committee on adjustment after an attempt to have it settled by the foreman and employees' and employer's representatives has been made and has failed. This committee investigates the case very thoroughly. If a decision can be reached, that decision is final and all controversy is closed. If no settlement is made, the matter is taken up by the joint works council. Appeal to the joint committee on final appeal is granted. The decision of this body is ultimate and binding on the employees and employers.

4. *Settlement by the Joint Works Council.* In this group the plans provide no means of final settlement other than the decisions of the joint works council. The plans of the Bridgeport Brass Co. and the Reliable Co. are typical of this group.

The plan of the Bridgeport Brass Co. provides that all matters needing adjustment first go through the regular form of being taken to the foreman. If a matter is not satisfactorily settled in that way, it may be referred to the group committee (one of the shop committees) of that section, where there must be a unanimous vote for an effective decision. If the vote is not unanimous, the matter is referred to the division committee (another shop committee), whose vote must be unanimous. If it is not a unanimous vote, the matter is carried on to a joint works council (executive committee), where a majority vote may decide it.

The foregoing discussion reveals considerable heterogeneity respecting the method of procedure, functions, and authority provided for in American non-union council plans. Due to this heterogeneity, accurate summarizing is impossible; however, it is of value to state at this point the most typical provisions regarding procedure, functions, and authority.

The typical plans have only broad generalizations concerning functions. There is commonly some reference to the function of cooperating with the management to gain greater efficiency, justice, and good will; but the most general and essential provision is that all matters needing adjustment can be considered by the councils. There are only exceptional cases of limitation on matters with which they deal. Special committees to deal with special subjects, such as sanitation, safety, and recreation are quite common. The functions actually performed by these councils are described at length in Chapter IV.

The typical provision for procedure is that matters needing adjustment shall be first presented to the foreman or some other company official, either directly by the worker or through his shop representative. It shall then pass on to the joint committee lowest in rank in the plan; on through to the highest joint body; to the highest company official; and to arbitration, if necessary in order to gain a settlement satisfactory to the worker, or his representative in the various bodies.

Respecting authority, settlement within the joint bodies in many cases is by majority vote, and in many plans by agreement or unanimous vote. In the majority of plans final settlement is by

arbitration, while in some, provision is made for final settlement by a special joint committee, the joint works council, or by the highest company officials.

It is highly significant to notice that in the course of this investigation there were found several instances of companies having enlarged the authority of their joint councils after they had had experience with them; but not a single instance of delimitation of the authority of the joint councils was discovered.

CHAPTER III

THE THEORY OF THE COUNCIL MOVEMENT

A. THE LARGER ASPECTS OF THE COUNCIL MOVEMENT

The recent council movements in foreign countries, especially in England, Germany, and Austria, have been fostered chiefly by the conservative political parties, or by the employing classes, as a means of avoiding more radical reforms and of gaining the co-operation of labor in the industrial process. In the United States, the non-union council movement has also been fostered by government boards and by employers for the purpose of gaining the cooperation of labor or to check the growth of unions. However, granting that the council movement has been fostered largely by certain political groups and by employers, for other than purely democratic aims, it is none the less true that the joint council movement is a part of a larger evolutionary movement toward democratic industrial management, and is a result of the deeper forces which underlie that movement.

The type of industrial management which has prevailed in the immediate past has been properly described by the adjectives, "autocratic," or "aristocratic," meaning thereby that industrial concerns have been largely controlled by single owners or employers, or relatively small groups of owners or employers. The great mass of those belonging to these respective industrial groups has been practically without a voice in their control.

Democratic government has been aptly defined as "that form in the constitution and administration of which the mass of the adult population have a direct or indirect share."¹ The essence of the democratic principle is the extension of a share or voice in government to all of the qualified members of the group. It may be said without fear of contradiction, that no other principle occupies a more fundamental position in the beliefs, customs, and institutions of western civilization than the principle of democratic government. No other principle is cherished more dearly, and no other principle would be defended more desperately. The lessons of history and of personal experience have firmly imbedded in the minds of the great majority the belief that a well balanced regard

¹Garner, J. W., *Introduction to Political Science*, p. 219.

for the values in all the human lives within a social group is most closely approximated when every qualified member exercises, as nearly as may be, an equal voice in the government of the group.

This belief in the democratic principle made the onward march of democratic political government irresistible. But the affairs of men are not separated into water-tight, unrelated compartments. That type of government which proves to be best adapted for attaining liberty, justice, and equality in affairs of state tends to be adopted in other phases of group life. This may be clearly seen in religious affairs. The steady trend toward more democratic government within American churches has been oftentimes remarked. Whenever a common aim brings together a group of American citizens the methods of democratic government tend to be adopted. General or representative assemblies, elected officers, free discussion, settlement of issues by majority vote, constitute the American citizen's concept of group government. This type of government is adopted in the religious group, the chamber of commerce, the lodge, the mutual benefit association, the cooperative group, and the fraternal organization.

It would be strange indeed if among these people thus steeped in the ideals and practices of democracy, there should exist one group in which autocratic rule held sway, without dissatisfaction on the part of many members. The institution of private property has brought it about that the industrial groups in which many citizens combine in close association to further a common aim have been largely subjected to autocratic control. But dissatisfaction with such conditions was inevitable. The workers have called for democratic management.

The most significant manifestations of the workingman's demand for a voice in the management of industry, and of the evolutionary movement toward more democratic industrial management are found in the activities and accomplishments of organized labor. Through the medium of the trade union movement, the workers in many industries have already won a substantial share in the control of wages, hours, conditions of work, discharge, discipline, institution of new machinery, and similar matters directly affecting their interests and well-being.

Through the more indirect medium of legislation, the working class and the general public have also exercised an ever increasing influence in determining the policy and practices of industrial management. The employers and the managers have found themselves restricted in a multitude of ways by the rules laid down through the medium of law. Methods of financing; methods of marketing; quality of products; hours of labor; wages paid; conditions in factory, shop, or mines; processes of production; and many other matters have been regulated by law.

It is as a part of this evolutionary movement toward democratic industrial management which has its roots deep in the past, "carrying with it the strength and the inevitableness of the movement toward political democracy," that we must view the recent developments which are the subject of this study.

The council movement is very closely related to the two earlier developments described above. The joint industrial councils of England and the United States are a development based upon trade unions. The German, Norwegian, and Austrian works councils are required by law and cooperate with the unions, while many of the works councils, shop committees or similar organizations in the United States are either a result of governmental decrees, or are adopted in order to defeat the trade unions. Where the works councils have been inaugurated by law or governmental decree, the activities of the trade unions have been among the chief causes for such laws and decrees.

This strong and growing demand among the workers for more democratic industrial management has been the primary reason why certain employing or governing classes have found it most advantageous to adopt joint council plans in order to check more radical reforms, or to avoid or destroy unionism. Therefore, it would be a misinterpretation of the joint council movement to regard it as a movement based upon the theories in the minds of those actively fostering it. It is fundamentally a result of the widespread belief that social welfare, equality, justice, liberty, and similarly desired ends can be attained best in group life under a democratic form of group control. Viewed in this light, these joint councils are seen not as a result of the petty schemes of powerful individuals or governments, but as the result of the working of great primary principles which underly a broad evolutionary movement.

B. THE COUNCIL MOVEMENT AS A MEANS TO CHECK THE GROWTH OF UNIONS

The council movement in the United States has been directly sponsored by the employing class. Two motives which overlap to some extent have impelled the many employers to adopt voluntarily some form of employee representation in management. One of these, and probably the more prevalent one, is the motive of increasing the productive efficiency of the workers by eliminating ill will, and substituting good will and a spirit of co-operation between the management and men. The second motive is to oppose unionism effectively. The latter one has been present both in the case of firms where unions are already established and of firms where individual bargaining still prevails.

In the packing industry and the railroads, there have been examples of the adoption of local council plans in order to substitute localized collective bargaining for collective bargaining with well organized and strong unions.

However, the large majority of American non-union council plans have been adopted in concerns in which the men are not sufficiently organized to obtain any substantial degree of collective bargaining. In many of these cases, there has been no immediate danger of organization. This is particularly true respecting a large number of the council plans adopted during the recent period of depression when the employer held the whip hand. Nevertheless, the conclusion reached in this study, and elsewhere discussed,² is that the majority of these local non-union council plans have been adopted either in an attempt to break existing unions, or to avoid what has been considered as the otherwise inevitable coming of collective bargaining with unions.

Relieved of the camouflage that generally bedecks it, the theory underlying this anti-union attitude is that the employer can bargain more effectively and satisfactorily with a local organization than he can with a strong trade union. A sort of compromise between collective bargaining and individual bargaining is obtained. Further discussion of this point must be left to a later chapter.³

²See Chapter VI.

³*Ibid.*

C. DEMOCRATIC INDUSTRIAL MANAGEMENT AS A MEANS TO INDUSTRIAL EFFICIENCY

1. *The General Theory.* Compared with autocratic government, democratic government is not ordinarily considered efficient. On the contrary, it is often considered inefficient, to be preferred only because it furthers social welfare by gaining more of justice and equality.

The case for more democratic industrial management, as attained under collective bargaining through unions, has generally been stated much more in terms of its power to gain justice, equality, and liberty, than in terms of increased production. On the other hand, the case against unionism has been based chiefly upon its demoralizing effect upon production. Strikes, either open or on the job, restriction of output, defeat of scientific management, and many similar blows at industrial efficiency have been laid at the door of the unions.

In contrast to this, the recent council movement has been oftentimes fostered as a constructive means to greater efficiency. Among the definite purposes ascribed to the joint councils recommended in the Whitley report, are the following: "securing in the development of reconstruction the largest possible measure of co-operation between employers and employed; the better utilization of the practical knowledge and experience of the workpeople; industrial research and full utilization of its results; provision of facilities for the full consideration and utilization of inventions and improvements, designed by workpeople; improvements of processes, machinery, and organizations . . . with special reference to cooperation in carrying new ideas into effect."

Similarly, in the United States, the council movement has been advocated as a means to increase efficiency. The extensive work of the Shipbuilding Labor Adjustment Board and of the National War Labor Board in introducing joint works councils and joint shop committees into American industry was carried on as a part of the nation's great efforts to increase production during the war. The primary aim was the furthering of efficient production of war-time necessities.

Moreover, the council movement in the United States has been chiefly a voluntary movement, and the voluntary adoption of council plans has been partly an effort to install scientific person-

nel management, with the aim of increasing efficiency. Examination of the constitutions of the works councils, or shop committee plans, in American industries has shown that their object is generally stated in terms of gaining industrial efficiency, or that this aim is implied in the stated object of gaining industrial peace, harmonious relations, and resulting steady cooperative effort.

Finally, it may be noted that much of the literature of the works council movement has been produced by industrial engineers, personnel and employment managers, advocates of scientific management, and university professors. Among these students and proponents of democratic industrial management, great emphasis is given to the argument of increased efficiency.

Arguments for democratic industrial management, as a means to greater efficiency, are generally based upon the proposition that to gain increased efficiency the workers' good will and desire to cooperate must first be gained.

The opening passage of a recent book written by two proponents of joint councils in industrial management reads as follows:

"The new focus in administration is to be the human element. The new center of attention and solicitude is the individual person, the worker. And this change comes about fundamentally for no sentimental reasons, but because the enlistment of human cooperation, of the interest and good will of the workers has become the crux of the production problem."⁴

The proponents of the council movement find the cause of prevailing ill will and lack of cooperation in two facts: first, the laborer will not cooperate in the industrial process when he does not have confidence that he is receiving justice; and second, laborers, in general, do not at present have confidence that autocratic industrial management accords them justice. They point out that the activities of organized labor and the powerful Socialist, Syndicalist, and labor parties have been characterized by bitter fighting against employers and a system which they believe to be unjust. Injustice or actions believed to be unjust do not call forth cooperation, but are the direct stimuli to the instinct of pugnacity, and sentiments of fear, hate, and resentment. The workers, as a class, believe they are being treated unjustly, the result of which is suspicion, ill will, and refusal to cooperate.

⁴Tead, Ordway, and Metcalf, Henry C., *Personnel Administration*, p. 1.

One particularly significant source of evidence on this point is found in the testimony of employers, industrial engineers, and employment managers to the effect that, in introducing a joint council plan, the first obstacle which must be overcome is the distrust of the workers. The workers invariably take the attitude that something is being "put over" on them.

Mr. Wm. Demuth, president of Demuth and Co., testifies that "at first his workers were cold and suspicious," and that the most difficult task in installing a works council plan is to "establish confidence between the worker and executives."⁵

Dr. Charles P. Steinmentz, chief consulting engineer of the General Electric Co., states that many concerns have advanced schemes for cooperation which have failed because "they originated with the company, and the worker had nothing to do with the formulation of them. In all such cases the worker does not accept such suggestions, even if they might work for his good."⁶

Dr. Harry Tipper, who has made extensive first-hand investigations of joint council plans in the United States, testifies that employers have found it difficult to overcome the workers' distrust. He urges that those in charge of installing such plans should have the aid of the men in the sales department who are able to sell the idea to the workers. This is needed because their "prejudices are so deeply rooted, their suspicions so firmly and deeply intrenched, and the process of eliminating them and replacing them with good will and cooperation must be a long, laborious, and delicate job."⁷

Speaking of his experience in installing "industrial democracy" plans for many industrial concerns in the United States, John Leitch says: "I have found no particular welcome for my ideas. I have usually been received with suspicion as a 'guy,' taken on by the management to 'put something over.' Their second suspicion is that I am a disguised efficiency man, and that I am going to pull some new speeding up stunt out of my bag. It takes weeks and weeks to replace this ill will with good will."⁸

⁵*Factory*, Vol. 23, September, 1919, pp. 502-504.

⁶*Automotive Industry*, Vol. 40, April 17, 1919, p. 831.

⁷*Automotive Industry*, September, 1920.

⁸Leitch, John, *Man to Man*, p. 176.

One prominent American employer, whose concern has adopted a joint works council plan, makes the following significant admission:

"Aristotle says, 'the reward which a liar gets is that no one will believe him when he tells the truth.' Thus are industrial relations troubled. In times gone by management and men have tried to outmaneuver one another. They are now laboring under a burden of mutual suspicion resulting from the double dealing of past generations."⁹

The proponents of democratic joint council plans maintain, therefore, that autocratic management in industry has failed at a most vital point in the production process. Autocracy in industrial management, they say, "has been the rule for many generations, and has had ample time to prove its merits, but it has failed to gain the laborers' confidence and cooperation." Inefficiency has been the result.

There are two causes for this situation. The employer may treat the laborer as justly as he can, but fail to gain his cooperation because he cannot overcome the worker's distrust, and convince him that he is being treated fairly. Or the employer may be exploiting the worker. In other words, the obstacle to increased cooperation and efficiency may be either that justice is not being awarded to the worker, or that the worker cannot be convinced that he is being treated justly.

More democratic industrial management is advanced as a remedy for both evils. In the first place, it is urged that more democratic industrial management will result in more justice for the worker. The defining of justice in specific cases of conflicting interests is a very difficult task. The problems of a "fair day's work," the "just wage," the "square deal" in division of the product, or "just treatment of the men in matters of promotion," and dozens of similar problems in industrial justice are extremely complex. There are many minds involved. These many minds have been developed under diverse environments and subject to diverse teachings respecting fundamental principles of industrial justice. No accepted body of industrial law has been developed which defines what is right and just. In this field of industrial

⁹McCormick, Cyrus, *Proceedings Annual Convention of Industrial Relations Association of America*, May 19-21, 1920, p. 5.

justice society has evolved as yet but few if any widely accepted principles. The employer's attitude that he is fair when he pays the market rate of wages is not accepted by the miners who receive scarcely a living wage, and who read in their morning paper that their former employer has died, leaving an estate of many millions. The question of a fair day's work, involving as it does such fundamental conflicts of interest as the employer's desire for increased profits, the public's desire for more products and lower prices, and the workers' desire for more leisure, presents a similarly complex problem.

How, amidst these tangles of conflicting interests and desires and diverging opinions of industrial justice, can we most nearly attain a balanced regard for the values in all the human lives involved?

The proponents of the joint council movement believe that one fundamental step which must be taken in order to gain the closest approximation to justice in most situations is the adoption of a more democratic form of industrial management. Chief among the arguments advanced to support this view is that expressed in a famous passage by J. S. Mill, which is oftentimes quoted in the literature of the joint council movement, and in which democratic government is defended:

"Its superiority in reference to present well-being rests upon two principles of as universal truth and applicability as any general proposition which can be laid down respecting human affairs. The first is, that the rights and interests of every or any person are only secure from being disregarded when the person interested is himself able, and habitually disposed, to stand up for them. The second is, that the general prosperity attains a greater height and is more widely diffused in proportion to the amount and variety of the personal energies enlisted in promoting it.

"The former proposition that each is the only safe guardian of his own rights and interests is one of those elementary maxims of prudence which every person, capable of conducting his own affairs, implicitly acts upon."¹⁰

The gist of all this is that what constitutes perfect justice in a particular industrial situation is not known or determinable; and

¹⁰Mill, J. S., *Representative Government*, Chapter III.

that a compromise between conflicting interests is all that can be expected. But the resulting compromise will most nearly approximate justice if each party, where conflicting interests are involved, has a chance to look out for his interests, or in other words, has a voice in the management of matters directly affecting his welfare.

Another argument for more democratic industrial management, as a means to obtain more just treatment for the worker, is found in the effect upon the employer of contact with employee representatives in joint councils.

The instinct of gregariousness, the predispositions of sympathy, sensitiveness to social approval and disapproval, altruism and the sense of justice, are sufficiently strong in mankind to result in a fairly social type of behavior among people closely associated and personally acquainted. The master workman, working at the same bench, living in the same house, eating at the same table with his journeymen and apprentices, felt an interest in their welfare. He knew their problems, their hardships, their worries, and their ambitions. If he was a normal person, he sympathized with them and desired to help them. Selfishness was checked by sympathy, altruism, desire for their approval, and a sense of justice.

But along with modern large scale integrated industry has come impersonal industrial relations. The personal contact between the employer and the worker has been lost. Under these new conditions, there is no longer adequate stimulation of the social instincts and predispositions. That personal contact, that vivid perception of a fellowman's hardships or desires which constitute the effective stimulus to sympathy, altruism, and the sense of justice disappeared when the factory system was established.

We cannot go back to the old time personal relationship in industry. But a personal contact and acquaintance between the employer and representative workers from his plant, through regular meetings of joint councils, offer a substitute condition which has great possibilities. The result of such a personal contact and acquaintanceship is that the employer gets the worker's point of view and comes to see him as a human being, rather than as so much labor power. He visualizes his human side with its home-making, sickness, unemployment, children to educate, desire for

a higher standard of living, and many similar phases. But what is most important, he gets these directly from contact with a fellow man, and getting them thus, finds his social instincts and predispositions stimulated. His concept of justice and his purposes are correspondingly socialized. Selfishness is checked in a healthful and natural way.

Finally, it is urged that the effect of more democratic industrial management will be cumulative. More justice will be accorded to the workers; efficiency will be increased; and employees will find that just treatment pays, and so will strive to attain still more perfect justice.

According to this theory, then, democratic industrial management will help to overcome the obstacle of injustice, and therefore, will help to obtain the good will and cooperation of the worker, with resulting increased efficiency. However, the problem of gaining the good will and cooperation of the laborer is not always solved when justice has been accorded him. In fact, so far as the question of efficiency is concerned, the problem is largely psychological. It is not significant whether justice or injustice prevails, so long as the workingman believes that he is receiving justice.

Reference has been made above to the deeply-rooted suspicion, distrust, and prejudices which color the viewpoint of the worker. He habitually distrusts the employer. It is almost a custom among the workers to dislike and to distrust members of the so-called capitalistic class. The young worker is raised in an environment from which, through the words and actions of his parents and fellow workers, he continually receives suggestions which weave into the very texture of his mind this suspicious attitude toward the employing class. Under these conditions, it is not surprising to find that the worker will not believe the protestations of management that justice and a square deal are being accorded to all. Whether such protestations be true or false, in the absence of any other source of knowledge than the employer's assurances, the workers will be suspicious and unresponsive.

Democratic industrial management offers the natural remedy for this situation, if the employer is sincere and the facts are with him. Having failed to convince the worker by a statement from the management, the employer may succeed by extending to the

workers' elected representative a direct share in management. Having helped to investigate, discuss, and decide an issue, if the decision is reasonably just, the representative will be satisfied and his constituency will believe his report.

This phase of the theory of more democratic industrial management, held by the proponents of joint council plans, is in no place more clearly set forth than in their writings concerning scientific management. The advocates of scientific management have claimed that industrial justice can be attained best by the rule of competent managers with their staff of scientific experts. These experts would "substitute for the arbitrary unjust rule of persons the impartial and just rule of facts." The advocates of democratic industrial management have replied that, even though it were possible to find these scientific super-men who could and would work out the rules of justice, the problem of efficient production would not be solved. Experience with scientific management has demonstrated the most fundamental defect in this position to be that, even though exact justice in matters such as wages, hours, conditions, discipline, shop rules, and the like, could be scientifically determined, the workers would still refuse to believe it. They do not trust the employer or his hired efficiency experts. Organization of the workers in some form, so that they may have a voice in determining what constitutes justice, remains the condition upon which their confidence and co-operation can be obtained.

The scientific managers have indeed been sadly disillusioned in assuming that workers would accept the opinion of scientific experts on matters of justice. The laborers have disagreed with almost every claim made by scientific management respecting the beneficial effect that its schemes would have upon labor. They have refused to bow with respectful deference to the superior knowledge of the employer's expert. Scientific management has claimed that scientific and accurate justice would result from their schemes. The workers have believed that scientific management would be another tool in the hands of the employers to increase production and profits without due regard for the laborers' welfare.

The report of the Garton Foundation reveals this attitude among the workers in England.¹¹ Speaking of scientific management, the report says:

"Nevertheless, it is regarded with profound dislike and distrust by the general run of workers, and in a great many cases, attempts to put it into practice have had to be abandoned.

"The reason usually given by the men for their hostility is that the employer, while paying higher wages, takes care that much more than proportionate increase is effected in his own profits; so that the ratio of distribution becomes less favorable to labor than before Before the undoubted advantages of motion training can materialize in workshop practice, full security must be given against these evils. This can be done only by introducing the system with the full voluntary cooperation of the men; and such cooperation can only be secured by transforming the whole constitution of the works in such a way that the men themselves may have an interest in the new system and some share in control over the working of it."

A further argument, presented in support of the proposition that democratic industrial management is the best means to attain that situation in which the workers will believe that they are being treated justly, is based upon the proposition that the doctrine of human equality occupies a fundamental position in the beliefs and institutions of western civilization. The doctrine that "all are created equal, and have equal rights," is stanchly upheld by the workers. One of those rights is that of liberty. But equality and liberty in industrial relations are attained only by democratic industrial management, for democratic management is in itself an important phase of both equality and liberty. Therefore, since "equality of status" within the industrial group, and the liberty of self-government are a part of the worker's concept of justice, democratic industrial management becomes the necessary condition of the worker's belief that he is being treated justly.

2. *Specific Applications of the General Theory.* The questions considered in this section are: What are some definite matters in respect to which the worker has shown lack of confidence in

¹¹*Memorandum on the Industrial Situation after the War*, Garton Foundation, Harrison and Sons, London, 1916.

management? How will more democratic industrial government help to establish confidence, and gain cooperation and efficiency in these specific cases?

3. *Profits, Dividends, and Financial Methods.* The most important problem to be noted arises in connection with profits and dividends. There is widespread belief among the workers that excessive profiteering, in the sense of gaining profits or dividends far in excess of any normal rate of returns for capital invested or risks taken, is the general situation in industry.

"Labor knows," says one student of the problem, "that there has been widespread profiteering on the part of the employing class. They also know that the government's statistics show that wages have not kept pace with prices. Yet employers, as a class, have demanded lower wages and by systematic propaganda have tried to create the belief in the public mind that labor was to blame for higher prices and that to continue to ask high wages would be to continue the vicious circle of robbery of the public. How can cooperation be expected to exist under such conditions? That is why labor is asking for information on profits and inside finances today. Until the laborers' distrust on these questions is cleared up, there is no hope of cooperation."¹²

R. L. Cormick, workers' representative in the Arsenal Orders Branch of the Ordnance Department, has expressed a growing attitude among American workers in the following words:

"Workers are everywhere willing and anxious to cooperate if their interests are safeguarded. Since they absolutely control whether they will cooperate or not, they demand guarantees of their objective, which is an equal division of product between public, employer, and worker."¹³

In England, the point has now been reached that the organized workers are demanding that private profits be abolished. Long ago they passed through the stage of merely objecting to excessive profits; to-day the strong Labor Party, the great miners' union, the railway unions, and many others are demanding the national ownership of their industries, with a fixed return to capital, fair salaries and wages, and after these, the lowest pos-

¹²*Annals of the American Academy of Political and Social Science*, Vol. XC, July, 1920, p. 17.

¹³*Ibid.*, p. 32.

sible prices to the public. There is, perhaps, something of a warning in this English development, for while the majority of laborers in this country are not yet demanding such extremes, yet the miners have frequently suggested it, and the railroad unions have actually fought for a plan which would give the present railroad capitalists government bonds with a fixed and fair return, but no profits. Long continued conditions which promote the workers' belief that exploitation is going on on a large scale, may bring further socialistic developments in America as well as in England.

The files of the various union publications reveal a systematic effort to gain insight into the finances of their respective industries, and to make the facts known to the workers. Even the advertisements of an industry respecting its profit-making ability are played up in flaring headlines in the labor press, together with many, no doubt exaggerated, remarks and deductions.

"Workers of all the basic industries, transportation, coal mining, iron and steel, and textile, are beginning to go behind the returns." One prominent labor leader states, that "there are very few unions to-day that do not have their own members in the employ of the various firms as bookkeepers or accountants, so that the inside financial information may be obtained." It is well known, of course, that the miners and railroad workers have long had expert accountants studying the financial situation of these industries, and that in certain branches of the printing and clothing industries, accountants, hired by both labor and capital, have made the reports upon which wages are based.

This belief in profiteering has become, to some extent, chronic or habitual with the working class as a whole. The more mysterious the business is made, and the less they know about its finances, the more exaggerated are their ideas respecting them. They assume that all concerns are making excessive profits, just as they assume that all employers are trying to treat them unjustly. The one assumption goes with the other.

The second phase of the theory of democratic industrial management outlined above finds application at this point. The problem for the many industrial firms which do not make unreasonable profits is to find a method of convincing the workers

of the facts. Many concerns in this situation are using democratic industrial management plans for the purpose of proving to the workers that profiteering does not exist.

There is also some evidence that other concerns are using some forms of democratic industrial management as an effective means of making the workers believe that profiteering does not exist, when in reality they are exploiting their labor. One employer who is an advocate of more democratic industrial management has quite frankly stated that he has investigated a great many of the so-called industrial democracy schemes in American industries, and has found that they are "99% pure bunk."¹⁴

The idea in these latter cases seems to be that the employee members of joint governing bodies are easily led by intelligent management representatives; and that since they will not believe management directly, they can be most efficiently made to believe they are getting justice, when they are not, by first satisfying their demand for a share in management through representatives on joint councils, and then by revealing fake "business secrets" to deceive those representatives thoroughly; so that they will report to the workers that justice is being received. To what extent this practice is carried on cannot be easily ascertained by the outsider.

In either case, sincere or insincere, the theory remains the same. The gaining of the cooperation of the worker, and hence efficiency, can be best accomplished by convincing him through his direct participation in management, or through his representatives in management whom he will believe, that he is getting a square deal in the distribution of the product.

There is a further important argument which is often advanced in this connection. The worker's concept of justice in dividing the products of industry is often sadly warped. The American Multigraph Co., realizing the ignorance of its employees upon these problems, spent two years in carefully conducting a plan to educate its workers up to the point of being ready to assume a share in the management through its present joint council plan. It found that its employees were totally ignorant on most important phases of management. Many did not even know the use of the activities of certain officials. The trade

¹⁴Feiss, Richard A., *A National Labor Policy*, p. 5.

unions also recognize this ignorance on the part of workers in general as is shown by their condemnation of "company unions," on the ground that the workers are not sufficiently informed and are easily deceived by the employers.

For example, the worker has very little knowledge of such matters as the functions of capital, stocks, bonds, credit, and good will; the necessity of undivided surpluses; the necessity of large depreciation funds; the necessity of meeting competitive prices, of expanding the plant, or acquiring sources of material; the necessity of paying sufficient salaries to hold capable managers; the necessity of higher returns for higher risks; and many other problems of management which must be considered in determining justice in the division of the product under the existing industrial system. Now if the workers do not have confidence in the direct statements of the employers, some other method for educating them properly respecting these matters must be found. Democratic industrial management offers a way. The workers believe their own representatives, and through them they can be convinced of these business facts and necessities. Moreover, constant rotation of offices in any scheme of democratic government gradually builds up a working force with actual experience in managerial problems. In this way, the worker's concept of industrial justice may be made more intelligent and the task of gaining his cooperation may be correspondingly lightened.

4. *Piece-Rates.* A second important question in respect to which the workers distrust the management is that of piece-rates. Where work is paid for by the piece, it has been the general practice of workers to guard very carefully against any speeding up, because they have come to believe from long experience, that if the employer finds they are making a high wage, relative to the prevailing market rate for such labor, he will cut the rates. The result of such a condition is to the worker's disadvantage. His effort to produce more has resulted in a lower piece-rate, making him then give more work for the same pay than he formerly received. After a few such experiences, the normal functioning of human instincts causes the worker to strive to gain the highest possible rate for the least possible work. Both the fact and the basis of cooperation are then lost.

The argument for democratic management in the control of piece-rates is concisely stated in the following paragraphs:

"There are innumerable ways and means of arriving at a fair basis, but all of them must have these principles in common:

"The method must be thoroughly sold to the people, and if the method cannot be sold, it is bad, no matter how many points of merit in it may appeal to the scientific mind.

"The initial rates should be fixed in conjunction with an elected committee of those affected, and the basis should be a scientific time study, every point of which is understood and approved by that committee.

"An observance of the above principles will go far toward overcoming the chronic hostility to measuring pay by effort. That hostility arises either from unfair rates, or from lack of knowledge of how rates are arrived at. Workmen insist that scientific rate fixing is only a device to wear out the worker for the benefit of the capitalist. . . . Scientific planning has undoubtedly been used at times for that purpose."¹⁵

In this case, again, there are the two groups to be considered. One group of employers sincerely condemns rate cutting and has resolved not to practice it. These employers desire to gain the workers' cooperation, so that production may be increased and all members of the industrial group may prosper. At the same time there are unscrupulous employers who desire to speed up the workers and then cut the rates. Both groups are defeated by the workers' refusal to speed up. It is probable here, as in the case of profits, that more democratic industrial management can and is made to serve both the fair and the unscrupulous. Giving the worker a share in determining piece-rates gives him confidence that the employer is sincere, and that the rate cannot be cut without his consent. Under such conditions, his cooperation is gained; he is willing to produce more in order to earn more; and all parties, including the public, prosper.

On the other hand, the employer who desires to cut rates can use the same machinery. He may give the employees representation on the council which determines piece-rates, as a means of gaining the workers' confidence and cooperation in increased

¹⁵Basset, William R., *When the Workmen Help You Manage*, p. 48.

production. Then a gradual reduction of the piece-rate, without loss of efficiency, can be accomplished by placing able leaders on the council, who persuade the workers' representatives that adverse business conditions and the consequent dire straits in which the company finds itself necessitate reduced rates.

5. *Financial Incentive Plans.* A third specific instance in which more democratic industrial management helps to gain the confidence, cooperation, and the resulting increased efficiency of the worker is found in the case of the financial incentive plan. The principal types of financial incentive plans in use at present are profit-sharing, economy or production dividends, and the bonus. These plans say to the worker: "Increase your efficiency, thereby increasing production, and you will receive a share in the gains you have thus made possible." The reaction of the worker to this proposal is not different from his customary reaction to the employer's proposal that he work harder. His attitude is one of doubt and suspicion. How can he know whether he gets a fair share of the increased gains his extra efforts have produced? Must he take the employer's word for it? Is it not a scheme, like scientific management and piece-rates, to gain for the employer a large profit at the expense of the workers? Are not these profits or this bonus simply a scheme to keep basic wages down? Where is the customary "joker"?

It is the consensus of opinion among authorities in this field that the best results cannot be obtained from financial incentive plans, unless the confidence of the worker is first gained by giving him a share in the control and administration of such plans.

The most significant evidence that can be given on this point is the result of a recent study made by the Cleveland Chamber of Commerce. As a rule, Chambers of Commerce, composed of conservative business men, champion the cause of workers' control in industry only after most convincing demonstrations of its efficiency. This study is an extensive one, covering the incentive plans of over six hundred business concerns in Cleveland and vicinity. Eight general principles are given in the final report as the principles which experience has shown to be the best ones upon which to base a financial incentive plan. The sixth principle

in this list reads: "They (the workers) should preferably be represented in the administration of the plan."¹⁶

6. *Health and Working Conditions.* A fourth matter to which managers are giving more and more attention because of its great possibilities in increasing production efficiency, is the improving of the workers' health. This is apparently a matter of mutual interest to both employer and employees, and one in which the workers would be anxious to cooperate. But experience has shown otherwise. The workers' habitual tendency to look for the joker and to distrust the employer and his agents is ever present. In the first place, the basis for improving the health of a firm's personnel must be the periodical physical examination. The workers have often opposed this. "Organized employees have from time to time raised objections to physical examinations. But, upon analysis, the objection is usually found to apply less to the examinations themselves than to the abuses which might possibly arise from them.

"Organized labor apprehends that facts discovered by medical examinations may be used to jeopardize the position of industrial workers; that by the use of too high standards competent people may be debarred from employment and that firms may use the excuse of physical incompetency to exclude union sympathizers. They maintain that responsibility for preventive or curative health should be jointly assumed by employers, workers, and community. The president of the American Federation of Labor has endorsed medical examinations, provided they are given by publicly employed physicians using health standards which have been agreed to in advance by the organized workers."¹⁷

Laborers are here again suspecting that the astute employer has conceived another plan which will serve his own interests at the expense of the workers, and they refuse to cooperate without a share in control which will enable them to know that their interests are being safeguarded.

Concerning this problem of health, the workers' cooperation is exceedingly important. The average worker is not troubled with ailments of an acute nature; it is the minor ailments that con-

¹⁶"Employees' Incentive Plans in Cleveland Industries," *Report of the Committee on Labor Relations of the Cleveland Chamber of Commerce*, p. 4.

¹⁷Tead, Ordway, and Metcalf, Henry C., *Personnel Administration*, p. 87.

stantly undermine the efficiency of the working force. Indigestion, headaches, bad teeth, exhaustion due to lack of sleep, colds, sore throats, and many similar troubles greatly reduce the efficiency of a plant's personnel through time lost from work or through reduced efficiency during working hours. But what are the chief means of prevention in these cases? In the first place, the worker must be taught the importance of proper air, proper clothing, proper eating, proper amount of sleep and exercise, proper and prompt care of colds and sore throats, importance of personal cleanliness, and many similar considerations. And in the second place, he must apply this knowledge. This cannot be done for him by the manager. It is a personal and private affair which must be dependent upon the worker's desire to keep himself physically fit for his work. Until the worker has been convinced that increased production is to his benefit, this difficult problem of efficiency cannot be solved.

The same situation exists in the matter of maintaining working conditions which are conducive to the best health and greatest efficiency of the workers. The elimination of eye strain due to facing the source of light, and nervous exhaustion due to irritating noises and vibrations, are to a considerable extent dependent upon the worker's cooperation in assuming the correct position at his bench and avoiding unnecessary noise in his work. The maintaining of effective sanitary conditions are also dependent upon the worker's cooperation. The proper use of towels and lavatories, toilet rooms, drinking facilities, cuspidors, are important considerations. Here again the worker's desire to cooperate, based upon his belief that increased efficiency is to his interest, must be the basis for his making these personal efforts to further the physical welfare of the plant's personnel. If more democratic management through joint councils can stimulate this desire to cooperate, highly important results can thus be achieved.

7. *Labor Turnover.* Another important cause of inefficiency in the utilization of the human factor in industry is the high rate of labor turnover which exists in the majority of industrial concerns. Replacing a man in the industrial organization involves the work of the employment office in examining and placing a new man, which often includes various trade or educational tests; the work of the foreman in training new men; the work of clerks in chang-

ing records; time lost to other workers through idle machinery when new men make mistakes; cost of having the machines idle; cost of repairs of machines or tools; cost of damaged materials; reduced efficiency until the new worker attains the skill of the one he replaced; and cost of accidents which are more frequent among new men. Where labor turnover is as high as 100, 200, and 300%, which are not exceptional figures, it is apparent that the loss of efficiency is very great.

A certain amount of labor turnover is unavoidable, but it is now generally admitted that it can be reduced to a very low figure in comparison to those just mentioned. In the study of this subject, the fact has been revealed that labor turnover is in a large measure due to causes which can be most effectively eliminated under democratic industrial management.

In the first place, labor turnover is due to the arbitrary and unfair treatment which workers receive at the hands of foremen or petty officials. This leads to trouble between the two and ends either in discharge or the worker's quitting. When foremen or petty officials know that trouble in their gang or department is regarded as a cause of inefficiency, that their acts and words are the subject of discussion in a joint council in which workers and higher officials are present, and that if they are at fault their acts will be censured and annulled, they will abandon their petty tyrannies and domineering ways and strive to gain the good will of the workers by according them the respectful and fair treatment which they desire.

The same general situation exists respecting all similar causes of labor turnover. Dissatisfaction, due to favoritism shown by officials in matters of promotion, or in discharging men in order to make room for friends, may be largely eliminated where the workers share in the settlement of such problems through a joint council. As a result of the joint control, less injustice exists; the imaginary cases of injustice are cleared up; and causes for discharge or quitting are correspondingly lessened.

On the other hand, it is urged that democratic industrial management functions in a more constructive way to lessen labor turnover. The worker's belief that he is receiving justice in the division of the product, that he has a real control over his job so long as his fellow workers judge him worthy of it, and the new

interest and pleasure which he feels in his work—all these things function to create in the worker's mind a liking for his job and a loyalty to the company. Under such conditions, labor turnover is greatly reduced.

8. *Discharge.* As a means of handling the problem of discharging men, democratic methods have certain definite advantages over autocratic methods. In the first place, justice is more nearly accorded to all when a joint body of workers and managers has the power to investigate any case of discharge, and to reinstate the man if it desires. Workers testify freely before such a body, thus making it possible to get a fairer presentation of both sides of the case.

Moreover, security of tenure and the resulting security and ownership in one's job are basic conditions of maximum efficiency. Worry and fear over threatened unemployment seriously reduce efficiency. When there is such worry and fear it is difficult to inspire in a man loyalty or interest in cooperating to improve methods and machines, and efficiency in general. Democratic management, by giving the worker a voice in the control of discharge, assures him that, so long as he is judged worthy by his fellow workers and high company officers, his job is secure. He is protected from arbitrary or unjust dismissal by the foreman or some other petty official. This control over the matter of discharge thus helps to restore that lost sense of proprietorship in the work, which is an important stimulus to better workmanship.

9. *Grievances.* Grievances may arise in connection with any phase of industrial relations. However, in this discussion of grievances as a special topic, reference is made particularly to what may properly be called petty grievances. There is general agreement among students of industrial relations that very much of our industrial friction may be traced to some petty dispute between a foreman and a worker. J. D. Rockefeller, Jr. voiced this same thought when he said that "experience shows that the vast majority of difficulties which occur in an industry arise between workmen and the subordinate officers who are in daily contact with them."

Another important source of grievance is found in the mass of shop rules and regulations to which the worker is necessarily subjected in modern large scale industry.

Are these petty grievances real or imagined? The statistics of the number of cases settled in shop committees and works councils generally show a large proportion settled in favor of the workers. Swift and Company, for example, report 291 for the workers as compared to 126 in favor of the management. This indicates that the vast majority of grievances are justified, and that their proper consideration and settlement are highly important if good will, cooperation, and efficiency are to be gained.

Henry T. Noyes of Rochester states that in his company, the Art-in-Buttons Inc., periodic department meetings have been held for ten years. In these meetings in which the company and employees cooperate for their joint good, 90% of the complaints heard were justified in whole or in part. He therefore concludes that under the usual form of management "a tremendous aggregate of dissatisfaction must exist and must be incapable of elimination because the management knows nothing of it."

Many of these petty grievances lead to acute industrial disputes with great damage to efficiency. But it is most important to visualize the tremendous loss in efficiency which must come from the resentment, ill will, and antagonism which smolders in the thousands of workshops as a result of petty grievances which do not bring acute disputes, and which are generally never settled. The proponents of democratic industrial management emphasize this source of inefficiency, and offer as the remedy for it the settling of grievances by the joint council or committee, with final appeal to arbitration.

The theory in this case is that in the joint council a fair consideration of both sides of each dispute can be attained; that justice will be more nearly approximated in settlements; and that the men will be better satisfied with decisions which their representatives have declared fair and necessary. The workers' distrust of the management makes it all but useless to provide the "open door to the manager's office" as the solution. Some few managers or other officials may gain the confidence of the workers sufficiently to enable them to settle grievances satisfactorily to all concerned; but the general situation is one of distrust, which makes the joint democratic consideration and settlement of grievances necessary. The worker will present grievances to his representative, who is his fellow worker, when he will not take them up

with officials whom he fears and distrusts, and who have the power to discharge him or discriminate against him in the future. Democratic consideration and settlement of grievances thus offer the most efficient means of eliminating the inefficiency which results from unsettled grievances, or grievances settled in an unsatisfactory manner.

10. *Shop Discipline.* In order to gain efficiency in a shop or plant, a tremendous number of rules and regulations must be enforced. There must be rules respecting smoking, drinking, swearing, fighting, absence, tardiness, obeying directions of supervisors, procedure in case of fire or other emergencies, keeping rooms clean and orderly, sleeping or loafing during working hours, care of tools and work bench or machine, sharpening of tools, ringing of time clocks or punching of time cards, use of telephone, seeing visitors in the shop or plant, passing from one department to another, eating during work hours, notification of proposed absence, et cetera.

The average worker is continually revolting against this mass of apparently petty and insignificant regulations. He may readily agree that he ought not to come to work drunk, but it is difficult for him to understand why he cannot use the plant telephone, why he will not be called to the telephone, or why a visitor cannot see him. He cannot comprehend the significance of such rules, and he may be bitter and resentful about these "company straight-jackets." That they will not let him answer the telephone may seem to him to be the very limit of greedy exploitation of workers without regard for their feelings or desires. When such rules are very numerous and the worker is running into them at every turn, his resentment may be fanned to a flame, and the spirit of cooperation and good will destroyed.

It seems to be generally true that workers seldom give whole-hearted cooperation in observing arbitrarily imposed rules, but grasp every opportunity to violate them when not being watched. Many such rules are necessary, but if maximum efficiency is to be attained they must be willingly and sincerely obeyed by the workers.

It is the theory of democratic industrial management that the most efficient way to get this cooperation in the enforcement of shop discipline is to permit the workers to share in the making of

the rules and the imposing of penalties for their infringement. That self-imposed rules and regulations are more willingly and consistently obeyed than rules arbitrarily imposed from above is a proposition that does not need defense.

However, the primary need in the case of shop rules is to convince the workers of the significance of such rules. Since the workers, on the whole, do not trust an autocratic manager, the only efficient way to convince them of the significance and necessity of so many rules and regulations is through their representatives who have studied the need of such rules and adopted them in the joint council. Even when the workers are thus convinced of the necessity of obeying all the rules and regulations and other phases of shop discipline, in order to reach greater efficiency, they must still be convinced of the basic proposition that greater efficiency is to their interest. They must be convinced that they will be justly rewarded for their cooperation. The need of more democratic industrial management to gain this end has been discussed.

11. *Utilization of the Knowledge of the Workers.* Another industrial problem, and one which is rapidly gaining recognition in the science of personnel management is the problem of utilizing the hitherto unused knowledge of the workers regarding the industrial process. This has been vaguely implied in the foregoing pages when speaking of the workers' cooperation. The discussion so far has emphasized the need of the willing, active cooperation of the worker in carrying out the clearly defined plans of the management. The proposition here is that the workers themselves have much knowledge which, if utilized, would increase industrial efficiency.

This phase of the theory of more democratic industrial management is set forth in the Whitley Committee Report, recommending the formation of joint councils in English industries. Among other purposes of these councils, the following are stated: the better utilization of the practical knowledge and experience of the workpeople; industrial research; full consideration and utilization of inventions and improvements designed by the workpeople; improvements of processes, machinery, and organization.

The following quotation from the "Browning Platform," a pamphlet setting forth the theory of democratic industrial man-

agement as practiced in the Browning Co. of Cleveland, is a typical statement of the point in hand. The "Platform" reads:

"The men who work at the machines, the men who erect the cranes, the men who inspect the finished product, all are in positions of peculiar advantage to see opportunities for improving workmanship, for simplifying designs, for avoiding waste, for speeding up manufacturing methods and for guarding against error or defect in the crane as it leaves the plant. Each sees the process from an angle entirely his own. At 'Browning,' this brain power and this opportunity for improvements are not allowed to go to waste. The 'Browning Plan' allows each worker to prove his own thinking ability to the advantage of himself, his company, and his fellow workers."

Perhaps the most significant evidence of the widespread belief in the fact that the workers have much valuable but unapplied knowledge is found in the development of "suggestion systems," as a part of the science of personnel management. The suggestion system is a plan whereby there is created a definite machinery for collecting and giving careful consideration to all suggestions which the workers can give, and which might lead to increased efficiency. Provision is supposed to be made for payment in proportion to the value of these suggestions.

The problem which immediately arises here is: How are these suggestions considered? Who investigates and passes upon the value of these suggestions? If the employee has thought out some invention, some improvement in machinery, or conceived some improvement in a production process or method, he is prone to exaggerate its possibilities; consequently when the customary five, ten, or twenty-five dollar reward is given him, he concludes that his good intentions have not been appreciated, and that the benefits of his effort to increase production have been enjoyed mostly by the employer. He probably had little love for employers before, and now he has less. Thus the autocratically managed suggestion system has oftentimes been found not only to defeat itself, but to increase the ill will of the employees. It was this problem that the Whitley Committee had in mind when it urged the creation of joint councils in industry in order to secure "the adequate safeguarding of the rights of the designers of inventions and improvements."

The solution again is more democratic industrial management. The workers must have a share in the administration of the suggestion system, so that they may learn through their own administration that they are receiving a fair reward for their suggestions. The same situation characterizes the whole problem of getting the workers to volunteer their knowledge of possible industrial improvements. Their good will, their desire to cooperate, must be gained first, and that must be based upon their belief that their efforts will be justly rewarded.

12. *Promotion.* Promotion occupies a position of prime importance in the field of industrial incentives. Without doubt, the most powerful incentive to do more and better work, and to cooperate wholeheartedly in the production process, is the conviction in the worker's mind that if he shows ability and serves faithfully, he will be rewarded by promotion.

Autocratic control of industry has failed to a considerable extent to make the most of this incentive as a means to increased efficiency. The reason that it has failed is inherent in the nature of autocratic control. Promotion has been in the hands of certain officials who could exercise arbitrary power respecting it. This has made it subject to all the limitations of the individuals exercising such arbitrary power. Favoritism, prejudice, likes and dislikes, grudges and enmities, race hatred, religious prejudice, politics, graft, jealousy, ignorance, spite, revenge, unjust discrimination, are among the many obstacles to successful autocratic control of promotion. Is the worker a Catholic and does the foreman or superintendent hate Catholics? Is the worker a Jew and does the official hold a hatred for Jews? Is the worker a negro and does the official hate negroes? Or in any of these causes is the choice between one of the official's own race, religion, or set, and one of some other race, religion, or set? Has the official a friend or a pal in the group or outside the group, that he wishes to help along? Has the official or some other official a relative to be helped? Have there been petty likes and dislikes and jealousies in the shop, and when one worker is promoted to a position of power or influence does he remember these? Are there foremen or officials who will promote the man who will tip them off properly? These are but a few of the questions which exist in the minds of the workers respecting the possibility of

gaining promotion under autocratic control. In a great many concerns, the mass of the workers hold little hope of promotion, and it is safe to say that the general situation is one in which the possibilities of this incentive are little realized.

The most significant single source of evidence of the truth of the situation just described is found in the literature and articles of scientific management, in which a determined fight has been waged against the inefficient use of the promotion incentive. The claim is set forth that inefficiency in arbitrary personal rule can be replaced by the rule of facts, so that promotion will depend upon definite accomplishments.

There is no doubt that scientific management can do much in this direction. But, if the position defended at length in the early part of this discussion is well taken, the lack of confidence in management, which exists among the workers, is extended to the management's agents and experts. It was shown that scientific management must be based upon the confidence of the worker and resulting good will and cooperation. Therefore, the ideal situation is one in which there is the rule of facts, or promotion based purely on accurately measured accomplishments; and in which the accomplishments of the worker are measured and recorded by scientific experts in cooperation with representatives of the workers.

SUMMARY

In the foregoing pages an effort has been made to state the theory underlying the council movement. The theory as presented may be summarized as follows:

The various council plans, herein discussed, have as their common and essential attribute the extension to the worker of a larger share in the control of industrial relations. They constitute, therefore, a definite step in the direction of more democratic industrial management.

These councils have been fostered by employers and governmental authorities. The immediate aims of these sponsors of the movement have been to eliminate ill will and industrial warfare; to gain good will and cooperation; to increase production; to substitute local collective bargaining for collective bargaining with unions; or to avoid the coming of more radical changes in industrial organization. But the council movement, viewed in its

larger aspect, is properly interpreted as a result of a broader evolutionary movement toward more democratic industrial management. The reason for governments and employing classes fostering the council movement has been found to lie in the fact that in such a step toward more democratic industrial management, they have found their only means of obtaining that increased efficiency which depends upon the workers' good will and cooperation.

CHAPTER IV

RESULTS ACCOMPLISHED BY NON-UNION COUNCILS IN THE UNITED STATES

It has been estimated that there are between seven and eight hundred non-union council plans in operation in American industrial concerns, and that more than a million workers are participating in them.

Theoretically, these councils constitute a step in the direction of more democratic industrial management, and obtain for the worker a larger share in industrial control. The extensive claims made concerning the results which such councils will achieve have been described in the preceding chapter. The present chapter is devoted to a survey of the results accomplished by existing councils. Such an inquiry falls logically into two parts: first, as to what extent these councils have achieved democratic industrial management; and second, as to what definite results have been accomplished by reason of this democratic management.

1. *The Extent to Which These Non-Union Councils Have Achieved More Democratic Industrial Management.* One method of determining to what extent these councils have achieved democratic industrial management is by determining how much authority or power is exercised by the workers through such councils.

Of one hundred American non-union council plans which have been examined, 52% provide for final arbitration of all matters upon which the workers and the management's representatives have been unable to agree. While this does not place final authority and control in the hands of the workers, it does put them upon a more nearly equal footing with the employer, in that the workers' representatives can force any matter through to final settlement by some impartial arbitration board which has been accepted by them.

Another 14% of the plans studied provide for final settlement by a joint works council of management and men. In a few of these cases, a unanimous vote, or a majority vote within both the

Note: All quotations in this chapter for which no reference is given are taken from replies received in answer to questionnaires sent to over two hundred firms. It has been necessary to omit reference to the source of such replies.

management and workers' groups, is necessary. In all cases, at least a majority vote is necessary. No measure which all of the management representatives oppose may be passed. In these plans no provision is made concerning the action taken if such joint councils cannot agree.

Thirty-two percent of the plans provide that in the event the joint works council or the works council, whichever ranks the higher in the line of procedure, cannot agree, or the decision of such a council or committee is not satisfactory to the worker or workers involved, final settlement is by one of the highest company officials or a committee of such officials.

However, practically all of the plans provide for the following regular procedure for all matters needing adjustment: A matter can be initiated either by the individual workers, by the joint works council or other representative bodies, or by the management. There is no limitation in any of the plans studied as to what matters can be considered by these representative bodies. Special committees, limited to certain subjects, are oftentimes provided, but in all the plants there is some provision for consideration of all possible matters needing adjustment. Almost all the plans provide that matters be first presented by the worker or his representative to the foreman or some other lower official. This makes of the worker, or his representative, and the foreman the first joint committee by which the matter may be discussed and settled. If no satisfactory settlement is reached, it then goes on to the next higher committee or council. Failing of settlement there, the matter goes on to the next higher body, and so on up to arbitration or the highest council or company official. In other words, there are several steps in the procedure, at any one of which final settlement may be reached, if the required vote is obtained and no appeal is made.

It appears that in a majority of these councils a very large step in the direction of more democratic control has been taken by providing for discussion and settlement of all matters by joint bodies of management and men, with final arbitration in case of disagreement.

In estimating the extent of authority exercised by these plans, wherein no final arbitration is provided in case of disagreement by the joint bodies, and final decisions are made by members of

the management, it is important to inquire whether or not such ultimate powers have been exercised by such officials. Wm. Demuth, president of Wm. Demuth and Co., in answer to the question, "What happens when the House and Senate pass a bill which is disapproved by the Cabinet?" states that "no such situation has arisen. The Cabinet has the power to veto, but has never exercised it."¹ P. W. Litchfield, of the Goodyear Tire and Rubber Co., reports that no vetoes have been necessary in the history of their plan.² B. C. Forbes, who made an extensive investigation of this movement, says that he found no cases where it had been necessary for an executive to use the veto power.³ The Nunn, Bush, and Weldon Shoe Co. reports that no case has as yet gone beyond the council.⁴ Mr. Stafford, of Swift and Co., Chicago, reports the same record in their case. He also adds that very few cases ever reach the general assembly. William Basset, who has organized many plans for democratic industrial management, says:

"Over all, the executives should for the present retain the right of veto. But I have never known an executive who found it necessary to exercise the veto. Out of some hundreds of cases of quasi-democratic shop government, I have yet to find a radical measure that passed."⁵

John Leitch, who has installed a score or more of council plans, reports as follows: "The cabinet is primarily an executive body. It has the power to veto, but I have never known that power to be exercised."⁶

The same general situation exists regarding the use of arbitration. There have been discovered only a few instances of resort to arbitration. A. H. Young says that in all the extensive experience of the International Harvester Co. with works councils in its twenty-one plants, no case has gone to arbitration. The Colorado Fuel and Iron Co. has the same record. The general situation seems to be that in the practical working of these plans, final settlement, either by arbitration or by high company of-

¹Tipper, H., *Automotive Industry*, Vol. 40, September, 1919, p. 1208.

²*System*, Vol. 37, March, 1920, p. 475.

³*Iron Age*, Vol. 104, July 24, 1919, p. 239.

⁴*Factory*, Vol. 25, July 1, 1920, p. 41.

⁵Basset, Wm., *When the Workmen Help You Manage*, p. 242.

⁶Leitch, John, *Man to Man*, p. 141.

ficials, occurs only in exceptional and very infrequent instances. It is impossible to determine whether or not the existence of such provisions exercises any considerable influence on the nature of the decisions reached by the various representative bodies. The fact that the case would be referred to the president or works manager if there had been failure to settle it satisfactorily in the representative body would not necessarily influence the workers in the representative body to adopt a decision less favorable to themselves. They might well assume that their persistent demand for a more favorable decision would have some influence upon the higher officials.

The fact that practically all matters considered by the various representative bodies, whether joint council, joint committees, council, or committees of workers only, are satisfactorily settled without reference to final authorities, seems to indicate that the workers are able to exercise a sufficient voice in control to obtain reasonably satisfactory settlements.

In this connection it has been suggested that the workers' representatives in joint councils are not capable of defending their interests; and that the employer's representatives, being more capable speakers, are able to dominate the meetings and persuade the workers to accept settlements favorable to the company. There is evidence that to some extent such a condition does exist. But the fact that the decisions reached in the many works councils in which the management is not represented are as generally accepted without veto or interference by the management as are the decisions of joint councils, seems to show that domination by capable management representatives is not a prevailing condition. It is obvious that an important consideration in this connection is the grade of workman involved.

Another reason sometimes given to show that these councils do not give the workers a real share in industrial management, is that the managers control the elections, and have men elected who will be favorable to the management. Those making such accusations have given no specific evidence, and in the course of this investigation there has been no discovery of evidence of such a condition. That any employer would expect to influence large numbers of the working men to vote for a "company man" and then later expect those workers, or their friends, to believe that

the elected council would give them a square deal is highly improbable. On the contrary, employers have generally testified to the need of great care to avoid giving the workers the least semblance of an excuse for claiming that the plan is manipulated from above.

A more serious charge made against works council plans is that the employers do not present to the employees honest data which must serve as a basis for their decisions respecting wages, hours, conditions, profit-sharing, production dividends, and similar important matters. The Filene Co. of Boston allows its employees to hire an expert accountant to go through the concern's books and learn for itself the facts of its financial condition. The Browning Co. has democratic administration of its profit-sharing plan, which permits its employees to verify to their own satisfaction all statements regarding profits. The Dutchess Bleachery Co. in its booklet describing its Partnership Plan, states as follows:

"The final essential in partnership, knowledge of the affairs of the company, is provided for by providing the Board of Operatives with copies of the audited monthly statements of the company. These are kept at the office of the Board of Operatives and may be seen by any operator on request."

The following extract from a pamphlet published by an eastern firm shows a different attitude toward this question:

"While this case was being heard, one member proposed that the board (joint works council) ask to see the company's books. He thought it would help in fixing the wages if the board knew how much the company was making. Another employee said he couldn't see how the company's profits had anything to do with the wages of an individual.

"'Wages depended,' he said, 'not on what the company was earning, but on the labor market. If semi-skilled workmen were doing a certain class of work and their wages were raised to what skilled workmen were paid outside, what was to keep the company from hiring skilled workmen? The board did not want to get any of the force on such high wages that it would be an economy to discharge them.'

"There was a good deal of discussion over the question, but this argument won. The board decided not to ask for the books."

Another interesting example of the attitude of one firm toward certain financial problems is given in the following extract from a pamphlet published by the Illinois Manufacturers' Association:

"A MEMBER: May I ask a question? In the discussion of rates and wages and pay, Mr. Young, does the element of what the management receives in the way of compensation ever enter into it? Is that made public in the Council meetings?

"MR. YOUNG: The question arose only at the adoption of the Council plan. I remember how we debated as to what we would say if that question came up, but it never has come up in three years. They have not asked what the superintendent got or what Mr. Utley got, or anything. They have confined it to mutual relationships in which they have felt they had a right to participate. If that question were asked, the answer would be specific. We retain unto the management the executive power, and we would perpetuate our management by paying whatever wages we felt it was necessary to pay to get the men we want.

"THE MEMBER: And that would be no concern to the Council whatever?

"MR. YOUNG: Probably that would be the answer."

In the replies to the questionnaire sent out, only six companies state that they permit the employees to verify their statements respecting the profits of the company. Four companies state that their workers have shown no desire to investigate the financial secrets of the firm. The general situation is that the representative bodies are dependent upon the statements of the management respecting financial and other inside business facts. This must be regarded as a possible point of weakness in the majority of the non-union employee representative plans. If the management desires to misinform the various councils or committees it is possible for it to do so. However, it is doubtful if this difficulty is any greater for the local council than it is for the unions.

Another thing which should be mentioned in this connection is the general ignorance of the employees respecting the intricacies of business finance and other management problems. In view of the fact that the workers' representatives in these representative bodies are informed concerning these managerial problems by the

¹*Some Experiences in Industrial Cooperation*, an address by Arthur H. Young at meeting of Illinois Manufacturers' Association, December 13, 1921.

company officials, it becomes apparent that there is great opportunity for the management to misrepresent the exigencies of the firm, and lead employees to a wrong conclusion respecting the possibilities of increased wages or shorter hours, the need of reduced wages, or the firm's ability to improve working conditions. To what extent employee representation plans are thus manipulated to serve the ends of unscrupulous employers, the outsider cannot easily determine. Even the government tax-gatherers find it difficult to learn the financial conditions of many business concerns.

However, there are a great many problems which are vitally important to the worker, the full understanding of which does not necessitate a knowledge of managerial problems and of the financial condition of the company. The application of wage rates to individual workers; the question of discipline, including discharge and shop rules and regulations; the setting of work standards; the transferring of workers; the petty troubles between the foreman and the worker; the whole problem of installing scientific management in the plant; the regulation of piece-rates to avoid rate cutting; promotion; and similar problems of great interest and importance to the worker can be considered intelligently by the workers without dependence upon the management for information. The fact that the various representative bodies reach a settlement in practically all cases of this nature without appeal to any final authority indicates a very large amount of truly democratic control.

A further matter is that of discrimination. To what extent will the fear of discrimination by officials in their treatment of the representatives deter these representatives from freely defending their own interests and the interests of their fellow workers? This is another one of those questions which can never be accurately answered. To determine to what extent the various representatives think about such matters and to what extent they are influenced by such conditions, is impossible. However, it is quite commonly believed that where the foreman, shop superintendent, or department head holds arbitrary power of discharge or of promotion, the employee is very slow to make either complaints or suggestions for fear of offending such an official. In most American non-union council plans special provision is made that no discrimination shall be practiced. The following provision is a typical example:

"It is understood that every representative shall be free to discharge his duties in an independent manner without fear that his individual relations with the company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

"To insure each representative his right to independent action, he shall have the right to take the question of an alleged personal discrimination against him on account of his acts in his representative capacity to the Director of Industrial Relations or to any of the superior operating officers, including the president of the company.

"Having exercised this right in the consecutive order indicated, and failing a satisfactory remedy within fifteen days, a representative shall have, for the ensuing fifteen days, the further right of appeal to the Secretary of Labor at Washington."⁸

The fact which makes these provisions significant is that under most of the plans all complaints of discrimination can be carried through to higher officials and to joint works councils or works councils, where investigation and impartial consideration are accorded. This has the effect of taking matters of discharge and promotion out of the hands of petty officials.

Nevertheless, the fear of discrimination constitutes a possible obstacle to the success of joint council plans. The official can find ways and means to injure any employee who has incurred his dislike. This fact the workers realize. However, there is no evidence to show that it is a serious handicap. The plans seem to be working, and the workers seem to be using them extensively. The natural result of continued successful operation of such plans will be to lessen this obstacle.

It must be remembered also that the employees can do much harm to higher officers. "Officials are being chosen more and more because of their ability to handle men," and failure on the part of an official to gain the good will and cooperation of his men is regarded unfavorably. Because of this, the workers have much power to discriminate against officials, especially in the representative assemblies where they get the hearing of the highest officials. This equality of power between officials and workers respecting discrimination tends to gain real democracy.

⁸Constitution of Standard Oil Co. (Indiana) plan.

Finally, the fact should be noted that many employers deny that discrimination is ever practiced, because to permit such a thing would be to bring certain disaster upon the plan. There is much truth in this attitude. These plans can never be seriously abused, because they cannot function without the good will and cooperation of the workers. On the other hand, there seems to be danger of the management getting into trouble if it does not discriminate against employee representatives. In the course of this investigation, two instances have been found where employers, impressed with the ability and good character of employee representatives, have promoted them to executive positions; whereupon the men have accused the management of robbing them purposely of their most capable leaders, by making company men of them. The manager's task is not always an easy one.

In estimating the degree of real democratic industrial management reached in these council plans, it is also significant to notice what subjects have actually been handled.

The succeeding discussion is based upon the answers received from approximately one hundred plans to the request that they "give a complete list of subjects which workers' committees have considered and assisted in handling." Some of the answers were in general terms. Four said, "All questions which concern employees." Seven answered to the effect that "at one time or another they have considered almost everything." One wrote, "Anything pertaining to factory management." Another answered, "Works councils used almost wholly for constructive suggestion."

The following are examples of answers received:

"We endeavor to operate the plans from a very broad and liberal standpoint, welcoming for discussion any matter whatsoever which may be presented by the employees, and feeling free, on the other side, to present to the shop representatives any problem that may be troubling the management."

"Our council has not been limited in any way as to matters which it should take up."

"All forms of welfare work, wage scales and piece-rates, application of such scales or rates to individuals, labor turnover, production processes, business policies, unemployment, stabilizing

employment, working conditions, hours, discipline, wage reductions, reduction and increasing of working hours."

AMERICAN MULTIGRAPH Co.

"Welfare work, wage scales and piece-rates, labor turnover, housing, election of manager, production processes, business policies, unemployment, working conditions, hours, discipline."

DUTCHESS BLEACHERY, INC.

"In the course of a year the cooperative committees will pass on approximately 300 subjects, which may be grouped under the following heads: welfare work, wage scales, working conditions, discipline, uniforms, purchasing stock in company, savings fund, pensions."

PHILADELPHIA RAPID TRANSIT Co.

"During the three or four years of its existence the subjects under consideration by the council of our cooperative association have been entirely too numerous to cover by an answer to a questionnaire. The procedure fills three good sized minute books and covers a great range of subjects, including working conditions, hours, wages, on time bonus, management of cafeteria and dispensary, condition of the plant, athletics, entertainment, educational activities, etc."

LEEDS, NORTHRUP Co.

"It would be practically impossible to give a complete list of subjects which have been handled jointly or by employee representatives under our industrial representation plan. The plan itself leaves the way open for practically unlimited scope as to the subjects of joint negotiation. During the more than six years of our experience, the matters considered have included some falling under practically every imaginable topic of interest to the workman and the management. Naturally, these topics have included wages, hours and working conditions, social and living conditions, safety, sanitation, housing, medical treatment, social activities, efficiency, unemployment and discipline."

COLORADO FUEL AND IRON Co.

"The matters which may come before the council are not limited. Anything of importance to the welfare of the Hood organization may be brought up.

H. P. HOOD AND SONS

In a report sent by the Bethlehem Steel Co. these facts are given:

Of 250 cases, 85% were settled in favor of employees. From the same number of cases the following classifications were made:

Employment and working conditions, 30%

Wages, hours or work bonus, piece-work and tonnage schedules, 20%

Health and works sanitation, 10%

Safety and prevention of accidents, 10%

Employees' transportation, 10%

Practice methods and economy, 10%

8% were distributed among the following subjects: housing; domestic economies and living conditions; education and publications; pensions and relief; athletics and recreation; continuous employment; conditions of industry.

The Standard Oil Co. (New Jersey) reports the following classification of 119 matters considered by their joint works council: wages, 38%; working conditions, 10%; promotion and discharge, 9%; hours, 8.5%; industrial plan, 8.5%; housing, 3%; sanitation, 3%; social, 3%; miscellaneous, 9%.

The following comparative tabulation of the subjects dealt with in the Industrial Cooperative Relations meetings held during 1919 and 1920 was sent by the Bridgeport Brass Co.:

	Year of 1919		Year of 1920	
	Number of Persons	Percent	Number of Persons	Percent
1. Disability and life insurance..	32	13	38	17
2. Safety and sanitation.....	27	11	23	10.5
3. Athletic and recreation.....	76	30.5	80	36.5
4. Americanization and education	23	9	21	10
5. Wages and working conditions	37	15	29	13
6. Plant economies.....	22	9	21	10
7. Miscellaneous.....	31	12.5	7	3
8. Total.....	248	100	219	100

Swift and Company have published the following analysis of cases handled, of the method of handling them, and of their final disposal:⁹

⁹*Capital and Labor Cooperating*, plant publication of Swift and Co., 1922.

Analysis of Cases

Accommodations for Employees.....	42
Wage Adjustments.....	78
Hours of Plant and of large groups.....	8
Safety.....	23
Sanitation and Working Conditions.....	57
Plant Equipment.....	20
Dressing Rooms.....	27
Disputes with Foreman.....	68
Working hours, Adjustments for individuals.....	14
Restaurant.....	12
Recreation.....	4
Suggestions for Improvement.....	15
Disputed Plant Rulings.....	48
Employees' Benefit Association.....	3
Cases withdrawn by Representatives.....	1
Cases pending further investigation.....	1
	<hr/> 421

Method of Handling

Handled by Joint Representatives in Voting Divisions.....	240
Handled by Committee on Rules, Elections, and Procedure..	5
Handled by Committee on Interpretations and Disputes of Plant Rulings.....	45
Handled by Committee on Changes in Working Conditions..	33
Handled by Full Assembly.....	94
Withdrawn.....	3
Pending.....	1
	<hr/> 421

Final Disposal

In favor of Employees.....	291
In favor of Management.....	126
Withdrawn.....	3
Pending.....	1
	<hr/> 421

In the three plants of one large company 154 cases were presented in four months. One hundred thirty-two were granted as presented. They included cases of apprenticeship, back pay, charity, deportment, discharge, docking of pay, economy, employment, equipment, health, holidays, lighting, living conditions,

machine equipment, overtime, pay methods, pay time, piece work, promotion, quitting time, relief, rules, safety, sanitation, shifts, short pay, suspension, termination, theft, working conditions, time clocks, and repairs.

Upon the basis of all the replies to the questionnaire, and all the other material available, the following summary has been compiled. This summary indicates the subjects considered by the works councils, and the number of different works councils which are known to have considered each subject.

Major Group

Grievances—90. (This topic overlaps the others.)

Working conditions—80. This includes sanitation, accident prevention, all health conditions, ventilation, lighting, heat, and orderliness.

Wages—75.

Hours—75.

Discipline—64. This includes suspension, discharge, and making shop rules.

Minor Group

Recreation—39. This includes welfare work, athletics, entertainments, etc.

Improvements in manufacturing processes—35. Reference is made in these replies to elimination of waste, tool improvements, new equipment, re-routing materials, and inspection methods.

Tardiness—22.

Absenteeism—18.

Unemployment—18.

Education—15.

Cooperative buying of supplies—14.

Plant restaurants—13.

Housing conditions—12.

Plant magazine—10.

Assignment of work—10.

In addition to these major and minor groups, the following topics appear in reports of council activities:

Cooperation with civic agencies such as Y. M. C. A.—3.

Employee representation plan in other companies—1.

General economic surveys—3.

Americanization—2.

- Purchase of supplies through the company—2.
 - Thrift and savings plan—4.
 - Stock purchase—3.
 - Relief for needy employees and families—3.
 - Street car transportation—3.
 - Observance of holidays—7.
 - Cost of living statistics—7.
 - General wage surveys—4.
 - Volume and cost of terminations of service—1.
 - Job analysis, and job specifications—4.
 - Reinstatement of employees—8.
 - Hospitals, medical treatment, dispensary—4.
 - Sick benefits—8.
 - Pensions—2.
 - Hiring. (Particular worker.)—4.
 - Employee's Guide Book—1.
 - Market conditions for product—1.
 - Labor turnover—4.
 - Classification of occupations—3.
 - Payment of overtime—1.
 - Acquainting new employees with job, and with provisions of plan or representation by instruction through foreman—1.
 - Methods of paying off—2.
 - Adjustment of factory hours to accommodate manufacturing schedules—1.
 - Disability and life insurance—3.
 - On time bonus—1.
 - Election of manager—1.
 - Promotion—4.
 - Reduction of wages—8.
 - Vaccination against small-pox—1.
 - Physical examination of applicants—8.
- These statistics are not offered without certain qualifications. In the first place, many of the answers to the questionnaire have been of a very cursory nature, and quite evidently not based upon any careful examination of records. The tendency may have been to enumerate certain more important topics to the neglect of many other topics that were handled. The few available digests which analyze the character of questions handled and which give

the number of times each topic has been considered, indicate that questions of the nature of welfare work, such as education and recreation, occupy slightly more of the time of these committees than the figures given above would seem to indicate.

This summary, together with the statistics preceding it, is indicative of the wide variety of topics dealt with by works councils, and the relative amount of attention given to the various subjects. It appears that there is little significance in the criticism that the activities of these councils are so diverted to welfare work, athletics, and minor grievances that important problems of industrial relations are not considered.

The conclusion that may be reached is that, in actual practice, these council plans have afforded to the worker a considerable share in management. The wide variety of subjects dealt with; the frequent consideration of the most important topics, such as wages, hours, conditions of work, and discipline; and the fact that satisfactory agreements have been generally reached in these joint bodies without reference to final arbitrators, seem to warrant this conclusion.

2. *The Results of More Democratic Industrial Management Through Joint Councils.* The question considered in this section is: To what extent has experience with these non-union joint councils supported the theory, that under more democratic industrial management the workers will receive more just treatment; that they will have more confidence in the management; and that good will, cooperation, and increased efficiency will result?

3. *General Satisfaction With These Plans.* Most employers have professed that their reason for fostering employee representation plans has been the desire to gain the good will and cooperation of their workers, as a means to the end of greater efficiency in the utilization of the human factor in industry. In the light of this professed desire, the testimony of these employers, to the effect that their democratic plans have been a success, may be offered as evidence that their purpose has been accomplished. Evidence of this character is so abundant that only a few examples can be given here.

A. B. Farquahar and Co. report respecting their council plan that "the system has so far worked admirably."¹⁰

B. C. Forbes of the Forbes magazine, who investigated a number of plans, writes that "experience has taught that the results are satisfactory beyond all imaginings."¹¹

One manager writes: "Industrial strife from a personal standpoint does not worry us at all. While there have been labor troubles in the east, we have gone serenely forward with our work."

A letter received from Sidney Blumenthal and Co. reads: "Industrial democracy has been in continuous successful operation ever since. (It was adopted four years ago.)"

The following quotation was taken from a letter from the Cambria Steel Co.: "The plan has been in use with satisfactory results. It has been helpful to both the employer and to the employee, in my opinion."

The General Electric Co. Lynn Works report: "We wish to state emphatically that our experience with the shop committee system has been very satisfactory, and we feel that in this statement we are upheld by the large body of our employees. The plan is functioning under present conditions fully as well as it did during more prosperous times, and we feel in this that it has passed through a severe test."

The attitude of the Browning Co. is indicated by the following statement: "We can hardly add anything to these documents, except express the utmost enthusiasm for the plan that we worked under during the past four years until we closed down. The moment we open up, the old arrangement will be started with the same enthusiasm and sincerity."

In a letter from the Dennison Manufacturing Co. this statement is found: "Altogether our experience with our works committee has been a happy one and based as it is upon the recognition of fellowship between the employer and the employee, has been productive of good will."

President E. E. Bross of Traub Manufacturing Co. states: "We have found that it not only yields greater returns to every-

¹⁰*Annals of the American Academy of Political and Social Science*, Vol. XC, July, 1920, p. 100.

¹¹*Iron Age*, Vol. 104, July 24, 1919, p. 239.

one concerned but that it has brought about a genuine spirit of cooperation that cannot be valued in terms of dollars and cents."¹²

Wm. Demuth writes: "The relationship between employer and employees is the happiest it has ever been."

Another firm says: "Of greatest benefit, we feel, is the influence that the plan has had on employees by way of improving their morale. Without a high state of morale among the employees, it is futile to talk of increasing production, reducing costs, or accomplishing anything else."

Still another firm reports as follows: "The chief benefit received is that we are able to understand each other's points of view better and are able to explain our policy to get the cooperation of the employees."

Altogether, the favorable testimony of more than one hundred firms has been noted in the course of this investigation, with only here and there an isolated note of dissatisfaction. The conclusion seems warranted that these plans of more democratic industrial management have generally accomplished the purpose of gaining more good will and cooperation from the workers.

However, various interpretations may be given to this mass of evidence regarding the satisfaction of employees with the council plans. As noted above, it may be regarded as evidence that these plans have accomplished the professed purpose of gaining increased good will, cooperation, and efficiency. On the whole, such a conclusion seems warranted; nevertheless, a question must be raised at this point. If the employers are fostering works council plans in order to further certain ulterior aims, such as a long run adverse effect upon unionism, their enthusiastic praising of these councils must be correspondingly discounted.

There is no direct evidence available to show whether or not more justice to the workers has been attained through these experiments in democratic industrial management. The fact that the workers have been better satisfied with conditions, as shown by their improved spirit of good will and cooperation, may or may not be evidence that greater justice has been attained. The value of these results as evidence of greater justice depends upon the truth of the assumption that this spirit of good will and cooperation and resulting efficiency would not have appeared unless the

¹²*Factory*, Vol. 25, p. 538.

workers had been treated more justly. Perhaps this may be accepted as the general situation, but attention must be called again to the fact that these plans of more democratic industrial management may be used effectively to make the workers *believe* that they are getting justice when they are not; and the employers are often, if they so desire, in a position in which they have the opportunity to deceive the workers concerning the vital questions of justice in wages, hours, conditions, profits, and financial policies.

Reference must also be made again to those matters, the handling of which does not involve knowledge which the workers do not have, or cannot easily get. The satisfactory settlement of such matters, without reference to final authorities or arbitrators, constitutes reasonably accurate proof that justice has been approximated.

4. *Specific Examples of Increased Efficiency.* The theory that more democratic management would bring increased efficiency in utilizing the human factor in industry, finds much support in the many specific instances of increased efficiency reported by concerns having a council plan. A few of the more significant of these specific examples are worthy of attention.

At this point it is also important to recall that one of the arguments advanced by proponents of more democratic industrial management is that the workers have much valuable knowledge of a constructive character which can be utilized only under democratic industrial management. The following discussion of specific examples of increased efficiency afford much support to such an argument.

The officials of the Packard Piano Co. are enthusiastic about what they call "industrial democracy." This plant had failed in an attempt to install scientific management. It had a strike in 1912 because an efficiency expert tried to introduce time and motion studies. But under a more democratic industrial management, the men have completely changed. They have cooperated wholeheartedly in responding to a financial incentive plan, time and motion studies, and all possible phases of scientific management. They are becoming famous for their motto: "Every man an efficient engineer." This plant claims that with 168 men it is now doing more work than it formerly did with 268 men, and that

working hours have been reduced and wages increased over 100%. The workers themselves have shown such an interest in eliminating waste that they have cut the cost of water used in one year from \$309.91 to \$31.82, or a saving of 90%. They also saved \$4656.24 in one year on the coal bill, having found that two men and two boilers could be dispensed with in furnishing the power.¹³

The Printz-Biederman Co. of Cleveland reports a production of nearly 50% in advance of all previous records. A textile manufacturing plant increased production over one-third within a year, eliminated all overtime and Sunday work, and also cut the working time from ten to nine hours. On account of the cooperative spirit of the employees, the American Multigraph Co. has increased production more than 40% over its former standard for a year. At the Atlantic Refining Co. of Cleveland, the productive increase per dollar paid in wages is represented by these startling figures: April, 18%; May, 21%; June, 33½%; July, 44%; and August, 74%. An Ohio Steel fabricating plant paid riveters 37.8 cents and 28.3 cents per hour in April, 1917. The record for the assembly room then stood at 15,017 rivets. Exactly four months later they were paying 47.2 cents and 35.4 cents respectively to the same classes of men, but the average of rivets had risen to 18,967.

Wm. McKenzie, president and manager of the Crookston Times Printing Co., states that there has been a great increase in the volume of business in his company. He also adds: "And right here it might be mentioned that some of this increase in volume was due to activities among the employees in securing business by personal solicitation among their friends. Job work, subscriptions, advertising, were picked up during their idle hours. Indeed there has developed a great deal of rivalry among the employees in this respect and the interest taken and the pride exhibited when some new business man has been secured are most gratifying. They are gradually developing a business sense which will stand them in good stead should they ever go into business for themselves."¹⁴

The White Motor Co. reports that since 1914 wages have increased 110%; but labor costs have increased less than 7% of the

¹³Leitch, John, *Man to Man*, p. 50.

¹⁴*System*, Vol. 37, April, 1920, p. 753.

value of the product. Materials, representing about 52% of the value of the product, have increased 60% over the 1914 cost; however, in spite of these big advances in labor and material prices, its product has been marketed at an advance of only 10% over 1914 prices.

J. M. Williams of the Fayette R. Plumb Co., Philadelphia, says that working time has been decreased 17.4% and production increased 14½%.¹⁵

The Browning Co. of Cleveland makes the statement concerning production that under an eight-hour day in 1919 it produced 5.4% more tons per man per month than in 1918 under a nine-hour day.

In the Wayne Knitting Mills a great increase in production is reported. The workers there have made many valuable suggestions as to means of eliminating waste, "raveling out of spoiled articles, and the use of this thread later in weaving; the salvage of the thread at the bottom of the spool which used to be thrown away; the saving of steps by a change in the position of the box holding the spools; and similar economies."

The following extract from material distributed by the American Multigraph Co. among the men in its shops is highly suggestive of the possibilities of democratic industrial management.

"The work of the Committee on Economies, Suggestions, and Improvements in our Product has proved to be one of the most important of the Multigraph Congress. It has collected and passed judgment on hundreds of suggestions that were turned in by the employees. Cash awards are made for all suggestions adopted. When suggestions are rejected, they are returned by this committee with a note of explanation as to the reason. A new suggestion box system has been installed by this committee. Standards for the payment of awards have been established which make it worth while for you to keep your eyes open and make suggestions. This committee works in connection with the Engineering Department, Production Department, and other Congressional committees.

"The Committee on Production Control has assisted in the enormous undertaking of increasing efficiency accompanied with

¹⁵Williams, J. M., *Annals of American Academy of Political and Social Science*, Vol. XC, July, 1920, p. 105.

increased earnings to the employees and the management. Production has been followed very closely by this group. It has suggested many improvements to the Production Department. This information was obtained by following our product through the manufacturing processes. Machine congestion has been investigated and recommendations offered to the Maintenance Department as to improvements. Advisory boards have been suggested as a means of improving production problems. This committee has worked unceasingly to the interests of the employees regarding improvements in their working conditions.

"The Committee on Time and Motion Study is composed of expert men capable of passing judgment on the big problems affecting the duties of machine operators and other help. It has assisted the Production Department in timing and rating over 1,100 operations. Employees have not complained in any instance as to the prices set being too low. This committee guarantees your piece work rate to be fair and high enough for you to make big money on. The chief aim of this committee is to benefit the employees by reducing fatigue and increasing earnings. The actual result from its work is the satisfaction displayed by the workmen about the earnings they now receive.

"The Committee on Spoiled Work digs in and gets to the seat of the trouble. Realizing the connection that spoiled work has to do with furthering the other congressional interests, immediate results are always obtained. The workmen are instructed as to the handicap resulting from spoiled work. The scrap reduction in the plant has been very noticeable through the excellent help from this committee.

"Through records obtained by the Committee on Attendance and Tardiness, information is at hand showing the efficiency lost by employees being absent or tardy. After pay day, absenteeism has been closely checked and recommendations offered where chronic absentees were concerned. Personal investigations have been conducted by this group, and great cooperation extended to department heads in establishing better conditions. Its aim is to prevent loss of time which is harmful to bigger Congressional workings. The absentee habit is not tolerated in this plant.

"Communication has been kept up between the factory and sales field concerning matters of the sale of the multigraph.

Many matters usually referred to Service Departments have been looked after by the Committee on Sales Cooperation. Manufactured parts of inferior quality have been traced back and the source of trouble found and corrected. This has proved a great help to the user in the field. It has also been productive of a better and closer relationship between the Production and Sales Departments.

"When the Special Eight Hour Committee undertook to reduce the working hours of this plant (we were then a ten-hour shop), it was confronted with the biggest problem of the day—reduction in hours with increase in production was the undertaking. A detailed analysis was made of the situation. The committee investigated production methods from all angles. This included sources of supply, production control, machine production, assembly, and distribution. After the management had accepted suggestions from this committee as to production improvements—production quotas were set for a monthly out-put with the belief that as much work could be performed in nine hours as was being done in ten, and at less expense—the employees produced the required quotas. As soon as quotas were made, the Senate voted that the plant accept the Congress recommendation that a nine-hour working day be initiated as a basis of determining the possibilities of a future eight-hour day. This was done with the same daily wage applying as was received for the ten-hour working day. With this change in hours came increased production at less expense. This was shown by the Congressional Committee on Eight Hours in its final investigation. This committee has unceasingly shown the employees and management the value of cooperation in all matters regarding the manufacturing of our product. This work has been of great help to the Company in bettering conditions for the employees who at all times reap the benefits of the constructive workings of Congress."¹⁶

5. *Wages.* Many firms testify to the value of joint consideration and determination of wage rates. The general thought in these replies is that it has been found that mutually satisfactory rates can be arrived at more quickly, and that increased efficiency results from the good will that has been gained by working out wage scales under this plan.

¹⁶*What Congress is Doing*, American Multigraph Co. plant publication.

One firm reports that it is no longer worried by wage disputes. "All matters of wages are left to the committee and its recommendations are carried out. We know that it is not going to recommend a raise for a man who does not deserve it." It cites an example of this. "One employee became dissatisfied. He claimed that the workers at his trade made more elsewhere. The committee investigated and found that he was working only thirty-three hours a week instead of the usual forty-four. They advised him to work steadily for a month, and see what he made, and then they would adjust matters. He failed to do so, and they advised him to seek work elsewhere."

Eugene B. Clark, president of the Clark Equipment Co., states that their council deals with many wage adjustments; but that they are based upon "careful day to day investigation of individual jobs, and concern slightly different premium rates. The general trend is to give the men more money. However, there is nothing radical about them. When the men themselves help to make the rates, they give careful attention to the grading of rates according to the worth of the man."¹⁷

Mr. A. B. Rich of the Dennison Manufacturing Co. says that in analyzing, grading, and valuing operations, "this company has felt the need of the advice and criticism that its employees may give the management, and in consequence, for the last few years the employees have elected a works committee under rules and by-laws drawn up by a committee of the employees (which rules and by-laws were accepted by the management without alteration). The works committee, as will be noted hereafter, is always a potential and often an active factor in the determination of wages. Furthermore, the presence within the organization of a works committee whose responsibility it is to see that the employees, individually and as a whole, have a share in management, is evidence of the spirit of the company and of the reputation it has in the eyes of applicants for employment.

"In setting the wages for the different classes of work, it has been found to be a good plan to begin with the simplest types of work and make up rates for these first, and then advance, progressively, to the more difficult jobs.

¹⁷*System*, Vol. 36, December, 1919, p. 1079.

"So far, a final unanimity has always been arrived at before taking any further steps in making up a classification. In every case where a general modification of wages has been made, it has first been submitted to the works committee for its approval or criticism.

"At this conference, a considerable amount of criticism is usually forthcoming, and many helpful suggestions are made which tend to improve the classification and more clearly distinguish the different types of jobs.

"The works committee has in the past appointed a subcommittee to study the wage classifications, and has itself compared them with the 'going rates' of wages as they have appeared in the publications that the management used; and as far as it has been able to, it has checked them up from personal knowledge or investigation. With comparatively few minor changes, the basis for wages outlined have been accepted."¹⁸

In 1921, this company desired to reduce wages. It proposed this to the works committee and invited its cooperation by the following communication:

"Just how this can best be brought about we do not know. It is something that must be carefully worked out and applied sufficiently slowly so that it can be done with accuracy and fairness. The management is working now on plans to carry out this general policy, which it will submit to the works committee when completed, and will be glad to have the works committee, either directly or through a subcommittee, work on the same problem and propose plans for the execution of these policies, or make suggestions in regard to their execution."¹⁹

A conference committee, representing both the management and the works committee, was created. This committee then drew up plans by which the adjustment was accomplished. "The starting wages, or minimum and standard wages, were in practically all cases reduced to conform more nearly with general wage levels. Maximum rates were maintained. Individual re-rating with the new wage rates for basis was carried out within six weeks, and although all had the privilege of questioning their

¹⁸*The Annals of the American Academy of Political and Social Science*, Vol. C, March, 1922, pp. 20, 22, 24.

¹⁹*Ibid.*

final rating, either directly or through the works committee, only fourteen out of 2,500 raised any question in regard to their standing after the readjustment."²⁰

The following passage is from material distributed by the American Multigraph Co.:

"Wage scales for every kind and grade of work, both manufacturing and office help, have been classified and rated by the Committee on Wages, Rates, and Compensation. These ratings were all based on the ability of the individual and the quality and quantity of work produced. All help is classified under first, second, and third class gradings with a minimum and maximum wage applying to each classification. Every employee has the opportunity of receiving higher wages by his progressing from the grade to which he was originally classed to the next higher step. As soon as you show yourself to be worth more, you get it. The wages set by this committee were established as standard by investigations conducted on the outside."

Mr. Frank J. Becvar, production superintendent of the Clothcraft Shops of the Joseph Feiss Company, in discussing their experience with rate fixing, makes the following statements:

"Any plans of wage-rate determination must, in order to be satisfactory, satisfy the workers affected on two questions that they raise either explicitly or unconsciously, viz: (1) Are the earning rates sufficient? (2) Are the various rates fair, relatively, one to another? The question of sufficiency refers not merely to what is needed for living but to other rates for the same grade of work in the community. The question of fairness involves such ideas as 'equal pay for equal work,' 'more pay for harder work,' and the like. We believe that our method of determining and adjusting wage rates yields satisfactory answers to these questions.

"Particularly is this true because we do not impose any determination or adjustment by arbitrary methods. We systematically review our classifications four times a year. We consider every operation and maintain or advance its class according to careful weighing of its contents. We drop an operation to a lower class whenever the operation itself has been changed so as to include a smaller proportion of the more difficult and valuable

²⁰*Ibid.*

work elements. We submit to a wage committee and to the operatives affected our revisions with our reasons in advance of the pay period in which they are to go into effect; this gives the operatives time and opportunity to consider them and protest if they deem the revision wrong. Any such differences of opinion are carefully threshed out with the employees through their representative and the Employees' Council. Lowering the class of an operation occurs with great infrequency. When this is done, opportunity is sought to advance the operatives so affected, to a higher class, so that their earnings will not suffer. We have never yet been able to man fully the operations in our highest classes."²¹

One of the chief forms of testimony received respecting the success of works council plans has been that, in periods of depression when retrenchment became necessary, the employees have been fair and reasonable, and have adopted wage reductions without interruptions in work.

A. H. Young, manager of the Industrial Relations Department of the International Harvester Co., states that two reductions of wages have been adopted by their works council; one of 20%, and one of 12½%. In both cases there was almost unanimous consent.²²

The following extract from a pamphlet published by the American Multigraph Co. describes its committees' activities during a period of depression:

"The real measure of the worth of an employees' congress, however, is found not in what it does when times are good, but rather in its record during a period of depression. Many industrial democracies were born during the war period on a rising labor market, when conditions were most favorable to their success. The great test, however, is now in progress, and many managers are awaiting its results with keen interest.

"It was to be expected that any organization of employees would vote for, and accept gracefully, any measure that increased wages or reduced working hours without loss to the workers; but how would such an organization react when economic conditions made retrenchment necessary? That was the question.

²¹*Ibid.*, pp. 17, 18.

²²Pamphlet by the Illinois Manufacturing Association.

"Our Employees' Congress answered this question in a very fair and satisfactory manner. It became necessary for us to reduce the hours of work from six days a week, 44½ hours working time, to five days a week, 40 hours working time, and to reduce the force by about 20%. Each of these moves was made after a committee of the Employees' Congress had gone into the matter thoroughly and concurred with the management in the course taken.

"In the case of the men laid off, three lists were prepared—one list from the production records of the company, one list from the general impression of the foreman, and another list prepared by the Wage and Rates Committee which, then meeting jointly with the management, discussed each individual name and why it did, or did not, belong to the lay-off list. In this way we have accomplished a shrinkage and the men themselves were able to suggest just who should or should not be affected.

"A further retrenchment becoming necessary, a committee from Congress was called into conference with the Cabinet and presented with facts and figures pertaining to relationship of production and sales. After a full discussion and study of the facts presented, the committee made a brief investigation of inventories of raw and process material and finished stock which, as shown, were increasing to a point that was causing us to borrow large amounts of money to finance. This committee then reported its findings to Congress, which in substance were that in justice to the owners of the company the only recommendation they could make was a complete shut-down of the plant until such a time as the abnormal inventories could be sold.

"Upon receipt of this report by Congress it was approved and passed on to the Cabinet. The Cabinet in turn offered the alternative of a three day week without change of hourly rates, with the thought of maintaining as much of the organization as possible. This was, in turn, approved by Congress and put into effect.

"The value of handling a matter in this way cannot be over-estimated. The investigations and reports of workmen carry weight with their co-workers and stimulate confidence in the management. The men realized they were getting the best deal possible under the existing circumstances.

"Statements of manufacturing costs were given with figures showing increase or decrease of hours necessary to produce our different products. Also the percentage of hourly increase in wages, increase in raw material and overhead spread over a term of six years—in fact, all possible information regarding the operation of the company's business was given to Congress for investigation. The best available figures showing reduction in living costs in Cleveland were given to the men, all of which showed the justice and necessity of reducing hourly rates.

"It was finally recommended by the Cabinet to Congress that the Company change from a three day week to full time basis of 44½ hours per week, with an average wage reduction of 20%. It was found from cost figures that the three day week was an uneconomic basis of operation due to the high, fixed overhead which could be eliminated. Also on the three day week the men were earning a weekly rate of slightly over 50% of their full time rate, whereas by working the full time with a 20% cut their weekly pay would amount to considerable more.

"The Wages and Rates Committee obtained all information needed for re-classifying the men according to efficiency and length of service. The Committee then established classifications for the work being performed. The worker's individual case was then taken up and all workers were placed in classifications according to rating made. Length of service automatically determined how near the maximum rate the worker would be paid."²³

The William Demuth Co. closed its factory in Richmond Hill before Christmas and opened it again January 1, with 35% of the normal force on the pay roll. The president of the company went before the House of Representatives telling it that if he continued running up a weekly deficit, the plant would be forced to close down; thereupon the House of Representatives reduced the income of the piece-workers 20%, and day-workers, 10%. The president said he would restore the income as soon as business warranted it.

The Bridgeport Brass Co. had only half of its force working half the time. The general manager went before the council of

²³*How Our Men Govern Themselves*, plant publication of American Multi-graph Co.

workers, and told it that there was no business and money was tight. He asked the workers what solution they would propose; whereupon they immediately drew up the proposal of a horizontal wage reduction of 10%, revision of all pay preferential classifications, and abolishment of all overtime pay.

In many cases wage reductions have been voted as a means to prevent a further shut-down of the plant, which would necessitate unemployment and no wages to the workers. By some, these cases have been regarded as proof that the employers really do possess the power to control wages, and that the employees are at their mercy in these plans of so-called democratic industrial management. Nevertheless, the fact that these plants had shut down temporarily, had partially shut down, or had offered the workers their choice of part time work or reduced wages, seems to indicate that retrenchments were necessary.

6. *Reduced Labor Turnover.* In the questionnaire sent out, the question was asked, "What definite facts can you mention as evidence that your plan has helped increase efficiency?" Thirty-two firms reported a reduction in labor turnover. One firm stated that its labor turnover had been reduced 50% in the year and a half it had had a joint council plan in operation. Another firm, whose industry is highly seasonal and which employs mostly unmarried women among whom labor turnover is generally high, cited the following low percent of labor turnover for eleven months beginning December, 1920:

.0889	.0336	.0522
.0889	.0462	.0358
.0159	.0739	.0317
.0074	.0440	

A third firm reported its labor turnover in 1919 to have been 49%; in 1920, 33%; and in 1921, 19½%. Its joint council plan was adopted in the latter part of 1919.

A fourth firm states, "Due, we believe, to the spirit of plant loyalty, which has developed, our labor turnover has been cut in half."

A fifth one writes, "By means of our plan of industrial democracy, we have been able to get the employee thoroughly interested in our financial incentive plan; and in order to increase their share in dividends, they have influenced many workers to change their minds about leaving our employ."

Another writes: "Labor turnover is partly due to unimportant disputes between men and foremen. By eliminating these, our plan has reduced labor turnover."

The Browning Co. of Cleveland, Ohio reports a 43½% reduction in labor turnover in one year. Wm. Demuth of Demuth and Co. in answer to the question: "What effect has democratic industrial government had on labor turnover?" states that in their plant labor turnover has "gone down until it is no longer a serious factor."²⁴ He reports further that the workers have persuaded the others to stay, in order not to reduce efficiency. The Virginia Bridge and Iron Co. says that it can clearly see that its council plan "reduces labor turnover and loss of time among the employees." William McKenzie, president and manager of the Crookston Times Printing Co., makes the statement that not a man has quit since their plan of democratic industrial management was adopted; and that the men filled the vacancies that already existed by bringing in their friends.²⁵

Closely related to the problem of labor turnover, is the problem of recruiting an efficient and plentiful supply of labor. One large clothing manufacturing concern says that its plan of democratic industrial management has solved its formerly bothersome problem of labor supply. This plant has made a careful survey of the causes leading people to apply to its plant for employment. It states that the second largest group in the classification made was of those who applied on account of the reputation of the plant for fair dealing. "Former employees and present employees all spread the report that the ——— shops are a good place in which to work. Statistics show that many apply many times for employment, which shows how they regard its character. One woman applied seven times. Too, those applying for work are of the very best type, which is a very important consideration."

John Leitch says that one factory, requiring skilled labor, no longer worries over a supply of labor. "That factory formerly could hardly get its complement; now with labor even scarcer, it has a waiting list."²⁶

²⁴*Factory*, Vol. 23, September, 1919, p. 502.

²⁵*System*, Vol. 37, April, 1920, p. 753.

²⁶Leitch, John, *Man to Man*, p. 91.

Of course, it is impossible to determine the precise amount of reduced labor turnover which is due to the successful operation of an employee representation plan. Nevertheless, the large number of firms reporting reduced labor turnover; the substantial character of the reductions; the fact that they have developed simultaneously with the growth of the employee representation plans; and the absence of other major causes to which the change could be ascribed, seem to warrant the conclusion that a more democratic type of industrial management constitutes a partial solution to the problem of labor turnover.

7. *Discipline.* There is practically unanimous agreement among concerns having employee representation plans, that the problem of discipline is becoming less difficult. Almost all existing plans provide for the handling of matters of discipline by joint bodies. Out of the many plans observed there have been noted only a few isolated instances of dissatisfaction on the part of the management with the manner in which matters of discipline were handled. Results seem to bear out fully the theory that men will obey rules voluntarily adopted, better than rules arbitrarily imposed, and will prove strict disciplinarians when given the responsibility. E. E. Bross, president of the Traub Manufacturing Co., states that democratic control in matters of discipline has proved a thorough success, and that the men "are sometimes even a little too strict. We have felt at times impelled to ask them to modify their decisions."²⁷

8. *Grievances.* It has been sometimes suggested that the only value of the average council plan is that it creates a new system of settling grievances. Those who have held this opinion have seemed to feel that these works councils, being only a new way for settling grievances, were, therefore, of little significance and not at all worthy of having the adjective, "democratic," applied to them. Careful consideration shows not only that the settlement of grievances is but one of the many important activities of the typical works council, but also that the settlement of grievances is such an important and complex matter that, if true democratic machinery is set up for the settling of all grievances, a very large step has been taken in the direction of democratic industrial management.

²⁷*Factory*, Vol. 25, August 15, 1920, p. 538.

As a rule, the constitutions of the various council plans provide that any grievances or any matter needing adjustment can be carried to the council if not satisfactorily settled by conference with the foreman or some other designated petty official. The significance of this provision lies in the fact that there are practically no limitations in the typical works council constitution concerning what grievances a workman or a group of workmen may present. The way is left open for any worker or group of workers to present a grievance to their foreman concerning any subject from shop rules to company profits. By refusing to accept the foreman's decisions, they can carry the discussions of that subject to the council, and in the majority of the plans from there to arbitration.

Moreover, the majority of grievances involve such vital subjects as: shop rules and regulations, discipline, wages, piece-rates, hours, scientific management schemes, promotion, discharge, suspension, fines, working conditions, and unfair treatment by officials. These are not trivial matters; they are the very essence of industrial management so far as the worker is concerned. It is, therefore, a long and significant step in the direction of more democratic industrial management when there is established a democratic procedure for settling grievances.

The importance of settling grievances promptly and satisfactorily has already been discussed at length.²⁸ The question raised here is: To what extent have these councils proved a success as a means of settling grievances promptly and satisfactorily?

Paul W. Litchfield, vice-president of the Goodyear Tire and Rubber Co., writes that their plan has proved to be a great success in the matter of settling grievances; and that it not only settles them more satisfactorily than they could have been by their former method, but that it uncovers many difficulties which otherwise would not have been known to the management. He adds that they had a well-developed grievance department before they adopted their present employees' representative plan; but it was not sufficient. The men would not come forward with their grievances. They would not try to get justice. "Nothing seemed

²⁸See Chapter III.

to overcome the men's feeling that the management would refuse or resist any request. The assembly did overcome it. Now there are no smoldering grievances."²⁹

Another employer writes to the same effect. "Many workers," he says, "are too timid to go to the foreman or other officials. They would oftentimes rather quit. Now their representatives go for them." They will go to their fellow workman, who in his official capacity will go to the foreman or other officials, and, if necessary, on to the council. Thus the "smoldering grievances" are avoided.

H. H. Weitzel, manager of the Fuel Department of the Colorado Fuel and Iron Co., says that its plan has resulted in a speedy adjustment of all grievances, in nearly all grievances being adjusted locally, and in a steady decrease in the number of grievances. All three of these important effects, he maintains, are directly due to the fact that there exists a regular procedure of appeal to higher officials and to a joint council where the acts of the foreman are reviewed. The result is that the foreman is less arbitrary and more just.³⁰

Another company writes:

"Of greatest benefit, we feel, is the influence that the plan has had on employees in the way of making them more contented and improving their morale. This is brought about through the employees realizing that any grievance or problem which they might have will receive just consideration and prompt attention when presented before the council."

Another thought that is emphasized in a number of replies to the questionnaire received is that the great need in modern large-scale industry is to replace the personal contact between men and management, which formerly existed, but has been lost. This, they feel, cannot be done in the old way when the employer or the manager knew all the men personally, called them by their first names, and talked often with them concerning the business and its problems. However, they do find that the employer or higher officials of the management can profitably take the time to attend the meetings of joint councils. Such meetings thus afford a substitute for the old-time personal relationship. They result

²⁹*System*, Vol. 37, March, 1920, p. 475.

³⁰*Iron Trades Review*, Vol. 64, May, 1919, p. 1139.

in a direct personal acquaintance and contact between the leaders of the men and the officials. If the official can gain the confidence and good will of these leaders, the confidence and good will of the rest of the men can be more easily attained.

The testimony is conflicting in respect to the effect of a democratic method of the handling of grievances upon the number of grievances. Several firms report that grievances have increased, but this they do not regard as an evil. One firm writes regarding this point:

"Grievances have increased considerably. We expected this and welcome it. We believe that such grievances always existed, but were not discovered and settled. Grievances nursed in secret undermine a plant's efficiency."

Another firm makes the statement that grievances increased at first, but later gradually diminished in number. The Colorado Fuel and Iron Co. reports a steady decrease in grievances, due to the fact that the foremen are less arbitrary and unjust.

9. *The Ability of the Workers to Share in the Control of Industry.* One of the questions frequently raised by employers when considering the problem of whether or not they ought to adopt a works council plan is: Are the workers capable of sharing in the control of industry, or are they so narrow, biased, suspicious, ignorant, radical, and selfish that they cannot be trusted to exercise any real authority over industry? This same question is sometimes stated in a broader way: Under the existing industrial system with private ownership, competition, and the necessity of paying good salaries and dividends, can the employer risk entrusting a share in the control of his business to the average laborer?

The evidence obtained upon this subject has been one of the most significant results of this investigation. Some of the typical statements of employers who have tried some plan of democratic industrial government may first be given:

E. S. Cowdrick, assistant vice-president of the Colorado Fuel and Iron Co., reports that after a careful investigation of conditions throughout its plant, he finds that the executives unanimously declare their confidence in the sound sense and fair-mindedness of the workers, when the latter are entrusted with the facts upon which to base their opinions. He adds, "In more than five

years of successful operation of the industrial representation plan of the Colorado Fuel and Iron Co., there has been abundant proof that the working man is able and willing to try to do his own thinking, and that, with all the facts in his possession, his judgment can be depended upon generally to be sound and his decisions fair."³¹

Another executive writes: "Men are better prepared to carry on industrial democracy than political democracy. A group of men in a shop, giving their lives to the work done there, understand that work. What they do not know they can learn quickly. Convince them that it is to their interest, and they will help make it a success. They can see and profit by mistakes."

A. H. Young of the International Harvester Co. says: "We have found that the American workingman will play the game on the square if his employer will play it so with him. He can and will make a fair judgment if given the facts upon which to base his judgment."³² B. C. Forbes, editor of the Forbes Magazine, after investigating several plans of democratic industrial management, states: "Not in one case has a House of Representatives passed a law which the president has had to veto. To me this is wonderful. Once the men were convinced that the boss was on the level, that they were actually having some say in wages and hours, they were sobered by the responsibility."³³ Mr. Stafford of Swift and Co. says that the discovery that the workers prove capable, reasonable, and efficient cooperators has been a matter both of surprise and education to many officials. P. W. Litchfield, vice-president of the Goodyear Tire and Rubber Co., also testifies to the fair-mindedness and capability of the workers. He reports that its House of Representatives, composed of workers only, "keeps the confidence of both sides, because it is fair, as nearly as can be judged. It is as ready to judge against one side as the other."³⁴ Eugene B. Clark, president of Clark Equipment Co. writes: "Your men will not abuse the confidence you have placed in them. The overwhelming majority of workmen

³¹*Industrial Management*, Vol. 62, July 1, 1921, p. 32.

³²*Some Experiences in Industrial Cooperation*, pamphlet published by Illinois Manufacturers' Association.

³³*System*, Vol. 36, December, 1919, p. 1079.

³⁴*Ibid.*, Vol. 37, March, 1920, p. 475.

are straight.”³⁵ Mr. Nunn, president of the Nunn, Bush, and Weldon Shoe Co., says: “We are glad to get radicals on the committee. It sobers and educates them. Never since the adoption of the plan has the management found the responsibility unwisely placed on the workers, or that a decision rendered by them has been unfair to the management.”³⁶ The Bethlehem Steel Co. has found that its workers, in deciding questions, have shown “a full understanding of the issue in hand, fair open-mindedness, and ability to consider both the employees’ and the employer’s side of the question.” A letter received from the Dutchess Manufacturing Co. says, “We plan to enlarge the responsibility of the committee, as it is able to take added responsibility.”

Other statements, which have been made by executives of plants having works councils, are as follows:

“In most cases the men are sound, reasonable and open-minded.”
S. BOWSER AND CO.

“The management could not desire more in the way of co-operation than has been given it by the employee representatives. As a rule, the representatives are of a considerably higher intelligence than the average of the employees they represent.”

WALWORTH MANUFACTURING CO.

“Our workers have thus far elected very able men to represent them, and they have shown a keen desire to cooperate.”

WESTINGHOUSE ELECTRIC AND MFG. CO.

“We are very much impressed by the type of men who are selected to represent the men in the committee meetings, and in most cases find them reasonable, trustful, and of real value to management and men.

“While at times the progress would be quite stormy, there never has been an occasion where our men did not show good judgment and exceeding fairness with the company in their final conclusions.”

HYDRAULIC STEEL CO.

These are but a very few examples of the testimony which has been found upon this point. The evidence at hand at this writing stands:

³⁵*Iron Age*, Vol. 104, July 24, 1919, p. 239.

³⁶*Factory*, Vol. 25, July, 1920, p. 41.

Companies testifying that the men have been, on the whole, capable, fair-minded and helpful, 107.

Companies testifying that the men have not proved satisfactory in their committees, 3.

The fairly enthusiastic way in which so many employers are praising the work of their men under a plan which extends to them a measure of self-management may be furthering the cause of democratic industrial management more than such employers realize.

10. *Education.* From time to time in connection with different subjects, mention has been made of the theory that democratic industrial management is a valuable means to the end of educating the men to the facts and needs of business and the problems of management so that they will have a more enlightened concept of industrial justice, will gain a new interest in the business, and will more willingly cooperate to make it a success.

However, there is a second phase to this problem of education. Education for the worker is greatly needed; but there is reason to believe that the need for education of the employers is even greater. Great inefficiency in the utilization of the human factor in American industries is admitted. If the arguments for more democratic industrial management as a means to efficiency are valid, then there is great need of educating employers to a realization of such truths. Moreover, there is no more reason to believe that the employees need education in the problems of management in order to have a more intelligent concept of justice, than there is to believe that the employers need education in the problems of the workers in order that their concept of justice may be broadened.

The value of more democratic industrial management through works councils and joint works councils, as a means to give needed education to both employers and men, is one of the points most frequently emphasized by employers. Speaking of its plan of joint control, the General Electric Co. makes this statement:

"By dealing in this way a continuous education of employees and foremen as to the needs and requirements of a complicated business has been affected. The need of such means has been felt in this works for many years. In view of the limited information possessed by our employees, many misunderstandings and narrow views had been entertained, which, under present circumstances,

with a broader viewpoint, have disappeared, and an increased sympathy with the aims and purposes of the management has been arrived at. Many instances could be cited as showing the change of attitude which has resulted from conferences between employees and management in these committees."

An executive of a large eastern factory writes:

"There is, of course, in many corporations a belief, amounting often to a prejudice, that the employee representation plan will develop in the direction of Sovietism. We do not doubt that where the plan is unwisely operated such a tendency will develop, particularly in periods of extreme prosperity. On the other hand, we believe we see strong evidence of a reaction from an extreme emphasis upon distribution which has characterized economic thought for the last couple of centuries to a realization that a greater part of the problem lies in the field of production. This is somewhat parallel to the point we have discussed above. From practical experience in the operation of our own plan, particularly during the last year or two, we have noted a growing conviction in the minds of our employees that their hope for a better standard of living rests not upon a greater share in the distribution of the net production of the enterprise, but rather upon the development of a greater production from which to obtain their share.

"In the first place, they find that if they received the entire distribution available for consumption, their condition would not be materially improved; and in the second place, they find in the discussion that arises that the share they are receiving is much greater than they had ever dreamed. In the third place, if the management is fair, the employees have an opportunity of convincing themselves of the fact, that in the end this brings them to what we have indicated above, namely a conviction that the only possible source of any material improvement in their standard of living lies in the direction of an increased production. One of the common deterrents to efficiency is the belief that the increased production will go to the employer, not to the employee who is its cause."

Mr. George S. Hawley, manager and counsel of the Manufacturers' Association, Bridgeport, Conn., says of the work of the committees in that city:

"In several of the largest and in some of the smaller plants the committees are now working most enthusiastically and effectively.

Not only do they meet with the management when they have matters to present, but they meet regularly and take up questions of shop conditions and their betterment, wages, cost of living, and other matters in which they have a deep interest. They have also learned something about industrial problems from the standpoint of the management. They have come to realize that their employers are fair-minded, willing to inform, and anxious to do the right thing. As a result, a fine spirit has been developed among the workers in these plants."³⁷

Mr. A. H. Young of the International Harvester Co. gives the following interesting comment upon the possibilities of educating the worker to an understanding of financial problems:

"One big thing we have done is this. I wonder if you realize just how promiscuous is the propaganda put out by organized labor and labor agents; how they talk of your surplus, your reserves; and give the impression to the workmen that they are simply gold dollars locked in a vault. We have had an opportunity to talk that thing over and show them that while the Harvester Co. has a surplus of \$70,000,000 that was built up by nineteen years of careful financing, that it is not gold dollars; it is brick and mortar, new plants, and new machines . . . and it is compared with the pay-roll of nearly \$90,000,000 the year before; that this surplus built up in nineteen years is a guarantee to them of the stable financial integrity of the company and that in those nineteen years we have built up less than we spend in one year in wages."³⁸

R. G. A. Phillips, vice-president of the American Multigraph Co., regards the education work accomplished by their works council plan as "indispensable."³⁹

Another employer says: "Hitherto, the labor leader has been the only teacher of the workingman, and we have found that it pays us to endeavor to educate the worker in a way that teaches him the value of cooperation. We find our joint plan a big help in this direction."

³⁷Hawley, George S., *Bridgeport Employees Committees*, published by the Manufacturers' Association, Bridgeport, Conn.

³⁸*Some Experiences in Industrial Cooperation*, pamphlet published by the Illinois Manufacturers' Association, Chicago.

³⁹*Iron Trades Review*, Vol. 65, July, 1919, p. 221.

In answering the questionnaire sent to it, the Walworth Mfg. Co. makes this statement:

"A part in discussing shop matters at the factory council meetings naturally puts the employee representatives in touch with many angles of the business which they perhaps little dreamed of before. In order that the employee representatives may appreciate the management's side of a question, the management must give them an insight into many confidential matters relative to the business. Their viewpoint is thus greatly broadened, and we have found that as a result, these employee representatives are a steadying influence among the employees whom they represent. We have also found that they take a deep interest in shop matters, as evidenced by the number of suggestions which they make at council meetings pertaining to shop efficiency, increased production, lowering of costs, and the prevention of accidents."

Another firm writes: "Looking at the plan from a different point of view, however, we might say that practical experience indicates that much is accomplished under the employee representation plan in educating the employees to an understanding of profit. This has been particularly true during the last four or five years, when the employee has seen so clearly that while efficiency may be at its lowest, business profits are at their highest; and now while productive efficiency of the employee is at its highest, profits are at their lowest. During the former part of the period employees displayed a strong tendency to believe that their wages or a considerable share of their wages should come out of the profits of industry. Now, on the contrary, they find themselves compelled to defend an adequate wage rate even against a severe loss in the enterprise. In short, they are having a practical illustration of the difference between wages, interest, and profit, using the terms in an economic sense. Unquestionably industrial democracy is a strong educational factor in problems of this kind. Obviously, at the same time, the employee begins to obtain a comprehension of the problems which strictly relate to management. He has more sympathy with the management and realizes how futile would be his attempt to enter that field under existing industrial and social conditions."

Also, democratic industrial management proves to have an educational value for the workers, due to the fact that it trains them for more responsible positions. This comes about chiefly, of

course, through their service as representatives on the works councils. With this is the benefit to the management of finding those who have executive ability.

In the questionnaire mentioned above the question was asked, "Have you found reason to believe that, as a result of the experience and education gained by the workers through your plan, they will become fitted for positions of higher responsibility?" The majority of the answers received were to the effect that it is too early in the experience of these plans to judge; but twelve firms replied in the affirmative, and three in the negative. This large proportion of affirmative answers seems to indicate that results, beneficial to the employees, are already beginning to show in many places.

Without taking space for further quotations, the following summary may be made of the ways in which more democratic industrial management, in the form of works councils or joint works councils and similar bodies, has been found in actual practice to be a source of valuable education for both workers and employers.

For the workers, it has broadened their knowledge of the problems of management; has brought them to see the importance of the problem of production; has helped to train men to take more responsible positions; has shown them, in many cases, that their employers, according to their concept of justice and a square deal, are sincerely trying to treat labor fairly; and has taught them the advantages which can result from constructive cooperation.

For the employers, it has greatly increased their ability to handle men successfully, by showing them the viewpoint, problems, and worries of the worker, as set forth in the joint council. In other words, it has been an education in industrial psychology, which many employers need. It has taught them the important fact that most of the trouble between labor and management is due to ignorance and misunderstanding, and is, therefore, easily remedied in joint bodies where each presents its view and the facts are jointly determined. It has taught them that the workers are fair-minded and capable of helping in management, instead of being radical, selfish, ignorant, and incapable of sharing in industrial control. It has shown them, through results gained, that there are great possibilities of increased efficiency if the human

factor is properly managed so that its spontaneous constructive cooperation will be gained. And it has taught them that more democratic and less autocratic industrial management is one pathway which leads to that spontaneous and constructive cooperation.

It is refreshing to note in the letters received from executives of various companies occasional reference to a broader purpose than that of efficiency and profits. The hope is expressed that the training received by the million and a half or more of workers now participating in employee representation plans, will not fail to make of them more intelligent and efficient participants in democratic political government. Familiarity with their duties, privileges, and responsibilities under representative government, and the methods by which they can make such a government function in the interests of the constituency, would appear to be the inevitable and socially beneficial results of democratic industrial management.

CHAPTER V

UNION JOINT COUNCILS IN THE UNITED STATES

A tendency has prevailed among those fostering the non-union council movement in the United States to enlarge upon the virtues of this new form of "industrial democracy," and apparently to imply that industrial democracy had not been previously developing in American industrial life. In any event, there is a noticeable tendency in this connection to ignore the work of the trade union and the industrial union. By many writers the new non-union councils are designated as examples of "industrial democracy," in contrast to collective bargaining through trade and industrial unions.

On the other hand, the representatives of organized labor maintain that these so-called "industrial democracy" plans are nothing more nor less than emasculated unions, following essentially the same general line of procedure that is followed in collective bargaining through the orthodox trade unions.

To compare adequately these non-union councils and the trade unions, it is necessary first to describe briefly the nature of the procedure followed in collective bargaining by unions and employers, and to reveal to what extent the unions, through shop committees, shop stewards, joint committees, joint councils, and trade agreements, have obtained for the workers a share in industrial management similar to that which the non-union council plans have attained. This can be accomplished best by describing the union procedure in its entirety, and then comparing it with the procedure of non-union council plans.

A. THE THREE TYPES OF UNION JOINT COUNCILS

There are three principal phases of joint industrial management by unions and employers as it exists in the United States today:

1. The formation of trade agreements.
2. The local application of such agreements, which includes the settling of all disputes arising between the parties involved.
3. The constructive work carried on by national or international joint councils which have been formed recently in certain industries.

These three phases may be described briefly in the order named.

I. *Joint Councils to Form Trade Agreements.* It is the aim of every union to obtain a trade agreement which will regulate all matters in which the workers are most directly concerned. The body which makes these agreements is essentially a legislative body determining general rules and regulations which will govern all phases of industrial relations dealt with by the agreement. It is important to note the character of such legislative bodies.

The joint conference plan for drawing up trade agreements has been followed in the coal industry with more or less regularity since 1898. An interstate joint conference has been held annually in the central competitive field. This joint conference is composed of eight miners and eight operators from each state (Illinois, Indiana, Ohio, and Pennsylvania). A unanimous vote is always necessary to reach a decision. The state joint conference follows the interstate joint conference. It deals with local matters and is very much the same in organization and methods as the interstate conference. Most of the work of the state joint conference is carried on by a scale committee, which is composed of two operators and two miners from each of the nine districts. It may appoint special committees for drawing up agreements. The agreements drawn up by these state and interstate joint conferences have contained very extensive rules and regulations. Such conferences are, therefore, properly regarded as representative legislative bodies which have exercised a considerable degree of control in the management of the mining industry.

Representatives of the International Molders' Union of North America have met in an "annual joint conference" with representatives of the Stove Founders' National Defense Association for the last twenty-two years. An elaborate trade agreement has been worked out and agreed upon each year. There are six representatives of each side in this joint conference.

The National Window Glass Workers' Union elects by referendum vote a committee of three, called a "Wage Committee." The manufacturers choose a similar committee and these two form a joint committee, which has met annually for the past thirteen years. Each year it has adopted an elaborate trade agreement.

The National Brotherhood of Operative Potters has a "Conference Committee." This committee meets with the Labor Com-

mittee of the United States Potters' Association to form a joint council. This joint council meets every two years, or oftener, and draws up elaborate trade agreements.

The International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America enters into local agreements made by a joint council of employers and representatives of the local union. These are made for a period of one year, arrangements being made to reopen negotiations before their expiration.

The United Garment Workers of America enter into a national agreement with the Union Made Manufacturers' Association. Their agreement is made by a joint council of union and employer representatives, which meets once every year, or more often if necessary.

The International Typographical Union has over 800 locals which enter into agreements with the local employers. These agreements are made by a joint council of the employers and employees, and always provide for a renewal of negotiations before they expire.

The Glass Bottle Blowers' Association of the United States and Canada has entered into national agreements with the employers for twenty years. A joint council of representatives of the unions and of the employers holds an annual preliminary conference in May and an annual final conference in July. This provides for regular legislative sessions.

These few examples show the typical method of procedure in the formulation of trade agreements in the United States. These joint councils, as they may properly be called, in which trade agreements are formed, are legislative bodies. The process of bargaining which takes place in such bodies is very similar to the procedure in the legislative assemblies of democratic states or nations, where representatives of various groups and interests strive to look after the interests of their constituencies.

In all cases, these industrial legislative groups are composed of representatives of the employers and of the workers involved. The workers' representatives are usually their elected officials or especially elected committees. The employers either attend in person, or appoint or elect representatives. This description applies whether the agreement is local, district, or national in scope. The large majority of trade agreements in the United States are

local in character and are made by local union representatives and employers.

The majority of trade agreements made by these joint councils are entered into for a period of one or two years, with provision for another conference before the date of their expiration, or for an indefinite period with a provision that either party desiring to terminate the agreement must give notice of his desire well in advance of the date on which he wishes said agreement to terminate. This makes possible renewed negotiations by a joint council, and also gives a degree of permanency.

The question next arises as to what matters are handled by these representative legislative councils. Are they merely a bargaining group, fighting over a wage scale (which, however, is the most vital phase of industrial relations), or do they legislate on other important matters?

In the first place, it should be noted that they are not primarily bodies for the settling of disputes. They are legislative bodies which draw up trade agreements in which there is always provision for some method of handling disputes that may arise between the parties represented.

The scope of trade agreements can be indicated best by an analysis of the subjects dealt with in a number of sample agreements forwarded to the writer by union officials. In the sample agreement sent by the International Hod-Carriers', Building and Common Laborers' Union of America, the following topics are dealt with: recognition of the union; hours; wages; overtime; working conditions; holidays; transportation to work; arbitration for disagreements or disputes arising; time of payment; medium of payment; provision for union labor; provision for stewards.

This summary has been made from an agreement sent by the International Stereotypers' and Electrotypers' Union: provision for local and international arbitration boards; provision for conciliation; wages; hours; rules for apprentices; work to be performed by journeymen and apprentices; provision of a substitute when a regular lays off; overtime; holidays; time of starting and quitting; one day's notice before discharge; provision for men employed on particular machine; provision that foremen be members of union; discharge controlled by joint committee.

A typical agreement of the International Ladies Garment Workers' Union contains regulations on these subjects: closed shop; provision for shop chairman to adjust disputes; right of union officials to investigate shops; minimum weekly wages and minimum hourly wages; shop committee from employees to settle piece-rates; hours; overtime; holiday pay; distribution of work; limited discharge; arbitration; working conditions; piece-rates.

A study of typical agreements of twenty unions has given the following results:

<i>Subjects Dealt With</i>	<i>Agreements Dealing With Each Subject</i>
Wages.....	20
Hours.....	18
Conditions of work.....	14
Discharge.....	12
Union recognition.....	8
Closed shop.....	5
Union preference.....	6
Foreman or forelady to be union member.....	4
Method of settling disputes.....	18
Overtime.....	16
Distribution of work.....	9
Introduction of new machinery.....	6
Introduction of new processes.....	6
Apprenticeship.....	14
Holidays.....	17
Lost time.....	4
Defective work.....	3
Time and medium of payment.....	8
Promotion.....	6
Enforcement of state labor laws.....	5

These facts serve to indicate, in a rather partial way, to what extent the trade unions have already obtained joint democratic control of industry through joint representative legislative councils which formulate the rules and regulations covering many of the important problems of industrial relations.

2. *Local Union Joint Councils.* The second phase of joint industrial management, as carried on by unions and employers, is

the local application of trade agreements. This is largely a matter of settling all disputes which arise between the local parties to the agreement.

The legislative bodies described above are seldom, if ever, local bodies, in the sense of confinement to representatives of employees and management from a single company or plant. The workers' representatives on such bodies are invariably selected or appointed from the local, district, or national union.

The question raised at this point is whether or not orthodox unionism has provided any local representative bodies which exercise a share in industrial management similar to that exercised by non-union council plans.

In most trade agreements, provision is made for local joint bodies to settle disputes. Such bodies are expected to make all adjustments that may be necessary to insure a fair and just interpretation of the spirit and letter of the trade agreements in applying them to the local or individual situation. The following digest of the provisions in a number of trade agreements for the handling of disputes throws much light upon this phase of union procedure:

Amalgamated Sheet Metal Workers' Union. A shop steward and a representative of the management adjust disputes. Appeal to a joint arbitration board of six representatives of the union, and six from the management, is permitted.

International Stereotypers' and Electrotypers' Union of North America. Shops are organized into "chapels." These chapels elect a chairman. This chairman and a representative of the management form a joint committee to settle disputes that arise; appeal may be made to a joint committee of representatives of the union and the management; arbitration by an impartial umpire is the last resort.

Brotherhood of Painters, Decorators, and Paper Hangers. Union shop stewards and representatives of the management form a joint committee to adjust disputes; arbitration is resorted to if this joint committee fails to agree.

International Slate, Tile, and Asbestos Roofers' Union of America. Shop stewards and representatives of the management form a committee to adjust disputes, if possible; appeal may be made

to a joint committee of three representatives from the union and three from the management; final appeal is to an impartial umpire, chosen by the joint committee.

National Brotherhood of Operative Potters. All disputes are handled by a joint council composed of a representative of the management and the union shop committee; appeal is granted to a joint standing committee of three representatives from the union, three from the management, and a seventh member chosen by these six.

International Association of Machinists. A union shop committee and the foreman form a joint committee to adjust disputes; appeal may be made to a joint committee composed of union men and the employer, or his representatives; final settlement is by arbitration.

International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America. Shop stewards are elected in each shop. These stewards and a representative of the management form a joint committee to settle disputes; appeal may be made to a joint committee of two representatives from the union and two from the management; final appeal to an impartial arbitrator is granted.

International Hod Carriers', Building and Common Laborers' Union of America. The shop steward and a management representative adjust disputes.

International Association of Heat and Frost Insulators and Asbestos Workers. A joint committee, called a "Trade Board," composed of an equal number of representatives from each side, adjusts disputes; this Board holds regular meetings.

Slate, Tile, and Composition Roofers', Damp and Waterproof Workers' Association. A joint shop committee of three representatives from the union and three from the management adjust all disputes. Appeal to arbitration is granted.

International Printing Pressmen's and Assistants' Union of North America. A joint shop committee of two representatives from the union and two from the management adjust disputes. Arbitration is permitted as a last resort.

International Ladies Garment Workers' Union. Union workers in each shop elect a chairman, who reports complaints to the union business agent. The latter meets with the representative

of the employer to make adjustments; appeal may be made to a joint committee composed of a representative of the union and a representative of the employer's association to which the employer belongs. Arbitration is the final step.

International Brotherhood of Pulp, Sulphite, and Paper Mill Workers. Each local union elects a grievance committee, which meets with representatives of the management. This joint committee considers all disputes that arise; appeal is granted to the higher union and company officials.

United Brick and Clay Workers. Shop stewards or yard stewards, elected by the union workers in the shop or yard, or appointed by the union, meet with the management to adjust grievances; appeal is made to a joint grievance committee in some cases, and in other cases, to the business agent of the union and a representative of the management.

Glass Bottle Blowers' Association. A factory committee, elected by the union workers in a factory, takes up with the management matters needing adjustment.

International Typographical Union. Each composing room is organized into a "chapel." Each chapel elects a chairman who takes up with the management all matters needing adjustment.

Pattern Makers' League of North America. The men in each shop elect a shop committee, which takes up with the management all matters needing adjustment.

International Brotherhood of Electrical Workers. In some cases, shop stewards, and in some cases, shop committees take up grievances with the management; appeal to a joint committee of union and management representatives is granted.

United Garment Workers of America. Union members in each shop elect a shop committee, which takes up with the management all matters needing adjustment.

The Laundry Workers' International Union. A joint committee of two representatives from the union and two from the management adjust disputes. These choose an impartial arbitrator, if necessary.

Cigar Makers' International Union of America. Every organized shop in this union has a shop steward, elected by the workers in the shop. He takes up with the management all matters needing adjustment. Appeal to a union committee, which meets with representatives of the management, is granted.

The Amalgamated Clothing Workers of America. In connection with this union, a word may be said respecting the Hart, Schaffner and Marx plan of settling disputes.

This plan, developed by Hart, Schaffner and Marx of Chicago, has been adopted in many clothing concerns in the United States, especially in Chicago, New York, Rochester, and Baltimore. This plan provides for the election of one shop representative from each shop. These representatives have charge of adjusting complaints within the shop. There are also deputies, appointed by the union, that have power to investigate and adjust grievances or disputes. In case that either or both of these parties have failed to adjust a matter with the management, it may be appealed to a trade board having five representatives of the union, five from the company, and an impartial chairman.

In addition to these methods of procedure must be mentioned the method of having the business agent of the local union adjust disputes with the management. In making this digest, there were examined thirty-five trade agreements made by as many different unions. The procedure followed by twenty-two of these has been indicated. The remaining thirteen provide that the business agent of the local union serve as the workers' representative to adjust disputes. This usually results in creating a joint council of one representative of the workers, and one or more from the management. If this group fails to make adjustments, appeal to higher officers of the union and the company is permitted. If this higher representative group fails, arbitration is usually provided.

This inquiry has shown that a very large number of unions in the United States have succeeded in obtaining provisions in their trade agreements for the settlement of disputes by a joint committee, composed of a representative or representatives of both the workers and the management in the local shop or plant. Many of the shop stewards, shop committees, shop delegates, shop chairmen, or adjustment committees, as the various agreements call them, are elected by the union workers in the shop to meet with representatives of the management to adjust disputes. In some cases, these shop representatives are appointed by the union from among the union members in the shop. In nearly all cases, appeal is granted from the first tribunal to higher union and management representatives, who may or may not be from the shop involved.

The fact that many subjects, including the most important phases of industrial relations, are covered in trade agreements greatly limits the scope of these local union joint committees. No instance has been found of any functions being assigned to these local bodies other than those of carrying on their regular union duties of collecting dues, etc., and their principal duty of handling all matters needing adjustment. The latter provision, however, is seldom qualified in any way; so it may be a very broad function. It means that these local bodies may perform important judicial and executive functions in interpreting and applying all the provisions of the elaborate trade agreements described above.

3. *Constructive National Joint Councils.* A third phase of joint industrial management by unions and employers is the work of certain national or international joint councils, whose primary purpose is not the making of trade agreements.

The international joint industrial council, composed of five representatives of the International Photo-Engravers' Union and five of the American Photo-Engravers' Association, was formed in 1919. The objects of this council, as set forth in the constitution, are as follows:

"To establish and promote the spirit of cooperation and of mutual helpfulness, to deal successfully with the problems of the photo-engraving industry, and to insure the protection and promote the interests of all concerned, it is deemed essential to create and there is hereby established a joint industrial council of the representatives of the American Photo-Engravers' Association and the International Photo-Engravers' Union, which shall be thoroughly informed as to the condition and interests of all engaged in the industry, and shall suggest for ratification, from time to time, policies and regulations which shall eventually become the law of the photo-engraving industry."¹

Further in the constitution these specific functions of the council are given:

1. Outlining of general trade policies which will secure the greatest degree of cooperation between employer and employee.

¹Woll, Matthew, "Standardization and Cooperation in the Printing Industry," pamphlet reprinted from *The Proceedings of the Academy of Political Science in the City of New York*, Vol. IX, No. 4, January, 1922, p. 6.

2. Inducing all employers and employees to join their respective local and international associations and to form local joint industrial councils.

3. Considering, reporting, and advising on any legislation affecting the trade, and presenting the needs of the industry to the government.

4. Encouraging and fostering research and invention, and publishing the results, when desirable.

5. Considering, reporting, and advising on all improvements in organization, appropriate questions relating to management, and the examination of industrial experiments with special reference to cooperation in carrying new ideas into effect; studying and proposing suitable methods of selection for apprenticeship, technical training for apprentices, and improving the general standards of workmanship; considering and settling of disputes, when such disputes are referred to it; removing dangers to health and safeguarding the physical well-being of employees; considering any and all matters of general interest to the trade.

Since this council is able only to advise and recommend, local joint industrial councils have been formed to carry out the policies formed by the international joint industrial council.

When this council was formed in 1918, the printing industry was in serious straits. "Competition in business was unfair, prices were steadily declining, the cost of production was increasing, and there was complete absence of standardized methods of estimating the service rendered. Business failure appeared as the unescapable path for the industry."² It was at this point that the employers and the unions agreed to cooperate. The first task undertaken was that of establishing a trade standard. Matthew Woll very ably describes the success attained. He says:

"With complete organization effected on the part of both employers and workmen, a joint investigation was conducted into the cost of producing photo-engravings. A chart was prepared, based upon the findings of this cost investigation. By this method of cooperation, a trade standard was established in the industry in a few months' time—a task which employers of themselves had

²Woll, Matthew, "Standardization and Cooperation in the Printing Industry," *Proceedings of the Annals of the American Academy of Political and Social Science*, Vol. IX, No. 4, January, 1922, p. 37.

failed to accomplish for years. Instead of facing bankruptcy the industry was now placed on a stable and prosperous basis.

"Then, too, the interest of the public was being better served by these standards. Unfair trade practices were discouraged, all purchasers of photo-engravings were placed on an equal plane, and prices were no longer determined by vicious competitive practices and underselling methods which had no relation to, or regard for, costs of production or the safeguarding of the industry; the prices thereafter were determined on the modern businesslike basis of cost of production."³

As a result of this successful cooperation, the joint conferences were established upon a permanent basis by creating a joint industrial council with a constitution and permanent personnel. A provision was made that this council should hold regular meetings. At its first meeting, it provided for an extensive investigation into the problem of the supply and training of apprentices. This investigation revealed much need for standardization. "It was immediately recognized that the proper training of apprentices was not an individual, but a collective responsibility, that it was unfair for one employer to exploit apprentice labor, turn out incompetent journeymen, and thereafter have incompetent workers exploit all other employers."⁴

Due to the efforts of the joint committee, there has been adopted a uniform standard ratio of apprentices that will provide an adequate supply of workmen for the rapidly expanding trade.

The next task undertaken by this council was that of establishing a uniform cost-accounting system that would serve as a basis for estimating costs of production, and make the standardization of prices possible. Great obstacles have been met in this field, but at present the joint council is at work devising a cost-finding and accounting system, which it hopes to enforce throughout the entire industry. The predominating element in this industry being labor, accurate and scientific cost-finding depends largely upon hearty cooperation on the part of the workmen. By attacking the problem through the medium of the joint industrial council, the good will and cooperation of the workmen have been gained.

³*Ibid.*, pp. 37, 38.

⁴*Ibid.*, p. 39.

This council has also attempted to reduce the number of specialized branches which have developed in the photo-engraving industry, and to establish more uniform methods and training. Under more uniform methods and training, employers will have less trouble in getting capable workers, and the workers will have less trouble in finding work in new communities.

Another task recently undertaken by this council is an investigation into the problem of shop practices, with the purpose of eliminating any evils discovered. A jointly conducted publicity campaign is also in progress. Its purpose is familiarizing "the users of the photo-engraving service with the many complexities and artistic requirements of the trade, so as to eliminate many of the misunderstandings that arise between the buyers and producers of engravings, because of their lack of knowledge of the intricacies of the trade."⁵

This council is now making plans to establish a joint research bureau which will investigate improved methods and processes of production, methods of eliminating waste, and other ways and means to promote efficiency and enable the industry to expand.

This is an unusual record of accomplishments. Considering the short time that this policy of cooperation through joint councils has been in use, it would seem to bear out the most extravagant claims that have been made for the joint council system.

A second example of a union national joint industrial council in the United States is found in the international joint conference council of the Commercial and Periodical Branches of the Printing Industry. The following bodies constitute the membership of this conference council:

Employers

Closed Shop Branch, United
Typothetae of America.
Printers' League of America.
International Association of
Electrotypers.

Employees

International Typographical Union.
International Printing Pressmen
and Assistants' Union.
International Brotherhood of
Bookbinders.
International Stereotypers' and
Electrotypers' Union.

This international conference is composed of eight members, four being chosen from the employers' association, and four from the labor organizations.

⁵*Ibid.*, p. 41.

The scope of work that this council may carry on is the same as that provided for the council of the Photo-Engravers. In fact, the principal features of both plans are the same; however, the chief work of this council is in connection with matters of policy.

The work of this council has been very similar to that of the Photo-Engravers' council. Among the matters upon which this council has done constructive work are the following: a cost-finding system for the printing industry; training of apprentices; standardization of trade agreements, and shop practices; establishing local machinery for informal and frank discussion of problems by employers and employees; adoption of cardinal principles to guide wage negotiations; making a standard arbitration agreement; introduction of the forty-four hour week; and a standard "cost of living readjustment" clause for all local trade agreements.

A third example of a union national joint industrial council in the United States is the Electrical Construction Industry.

The National Association of Electrical Contractors and Dealers held its 1919 convention in Milwaukee; and the International Brotherhood of Electrical Workers held its 1919 convention in New Orleans. At each of these conventions five representatives were appointed. These ten representatives composed a joint committee for finding some means of putting "the principles of co-operation into practice." This joint committee met in January, 1920, and formed and presented to the respective organization a recommendation "that a national joint body be created." This recommendation was accepted and a national joint council was held in Washington, April 20, 1920.

The purpose of this council, called "The Council on Industrial Relations for the Electrical Construction Industry in the United States and Canada," is described in the Declaration of Principles drawn up at the first meeting of the committees from each organization, and in a resolution adopted at the second meeting of the council:

"The vital interests of the Public and of Employee and Employer in industry are inseparably bound together. All will benefit by a continuous peaceful operation of the industrial process and the devotion of the means of production to the common good.

"The facilities of the electrical industry for service to the public will be developed and enhanced by recognition that the overlapping of the functions of the various groups in the industry is wasteful and should be eliminated.

"Close contact and a mutually sympathetic interest between employee and employer will develop a better working system, which will tend constantly to stimulate production while improving the relationship between employee, employer, and the community.

"Strikes and lock-outs are detrimental to the interests alike of employee, employer, and the public, and should be avoided.

"Agreements or understandings which are designed to obstruct directly or indirectly the free development of trade, or to secure for special groups special privileges and advantages, are subversive to the public interest and cancel the doctrine of equality of rights and opportunity, and should be condemned.

"The public interest is conserved, hazard to life and property is reduced, and standards of work are improved by fixing an adequate minimum of qualifications in knowledge and experience, as a requirement precedent to the right of an individual to engage in the electrical construction industry, and by the rigid inspection of electrical work, old and new.

"Public welfare, as well as the interests of the trade, demands that electrical work be done by the electrical industry.

"Cooperation between employee and employer acquires constructive power as both employees and employers become more completely organized.

"The right of employees and employers in local groups to establish local wage scales and local working rules is recognized, and nothing herein is to be construed as infringing on that right."⁶

There is also significance in the following declaration of the "broad purposes of the council":

"Whereas it is the primary purpose of the two Member Organizations to remove the causes of friction and dispute, the Council conceives its principal function to be that of study and research to the end that it may act with the fullest knowledge of the causes, and that it may secure the largest possible measure of

⁶Pamphlet, *The Council on Industrial Relations for the Electrical Construction Industry*, New York City, 1921, pp. 3, 4.

genuine cooperation between the Member Organizations and generally between employers and employees, for the development of the industry as a servant to society and for the improvement of the conditions of all engaged in the industry.

"That the Council earnestly urges upon the Member Organizations and each constituent body of them, that reasonableness, patience, good will, and a serious endeavor to see the merits and justice of claims put forward by the other party, which in this, as in all other efforts of men to substitute harmony for strife, are an indispensable foundation for cooperative effort, without which the council cannot achieve success in its purpose."⁷

At this second meeting, it was decided also that the council would be composed of five representatives appointed by each of the Member Organizations, each Member Organization appointing alternately each year two representatives and three representatives all to serve two years and until their successors are appointed. These representatives act on the council without compensation.

It is provided in the constitution of this council that it will settle disputes only when all existing machinery has failed. But the settling of disputes seems to have been the principal work carried on by this council. "Services have been rendered in considerably over one hundred cases, in which favorable adjustment has been realized by the council sitting as a tribunal and by informal methods In every case of informal adjustment a reasonable degree of satisfaction to both parties to the dispute has been the result."⁸

Another point worthy of mention is that this council has succeeded in developing a spirit of good will and cooperation between the men and the employers. The importance of this can hardly be overestimated, for good will is the basis of cooperation, and cooperation is the basis of increased efficiency. L. K. Comstock, president of the L. K. Comstock Co., New York, reports that "the representatives of the employers and the unions, by getting together in an informal way around the table and discussing

⁷*Ibid.*, p. 10.

⁸Comstock, L. K., "Joint and National Counseling in the Electrical Construction Industry," *Proceedings of The Annals of the American Academy of Political and Social Science*, January, 1922, pp. 79, 81.

frankly without heat or passion the many perplexing problems in which both groups are vitally interested, have developed an industrial good will and respect for one another's opinions, which are of material assistance in laying the foundation for better industrial relations throughout the whole industry." Their method is the joint investigation of the facts, and the working out of the elaboration of a constructive industrial program on the basis of the facts.⁹

However, the council is planning more constructive work. It is working now for a national agreement that will standardize conditions in the industry. "The Council proposes for itself the task of studying the whole question of apprenticeship, advancement, education, and qualification of local restriction placed upon the use of traveling cards, or waiting and traveling time, and of responsibility for defective work."¹⁰

The three national joint industrial councils in the printing and electrical industries in the United States are similar in form, purpose, and procedure, to the national joint industrial conference of the Whitley type in England. They are, like the Whitley councils, based upon unions and employers' associations. They are assigned constructive functions, and have a permanent personnel, a constitution, and provision for regular meetings.

The record of the activities of these American councils shows that those in the printing industries have confined their activities more largely to constructive work than have the Whitley councils in England. However, in the council of the electrical industry, the work of settling disputes has predominated to a greater extent than in either the printing councils or the English councils. The Whitley councils have devoted much more time to deciding wage scales, questions of hours, and conditions of work, than have these American national joint councils.

These national joint councils have certain important characteristics in common. In each case there has been a frank recognition of the union by the employers. The employers have apparently declared their intention of dealing regularly with the unions. Peace has been declared.

⁹*Ibid.*, p. 83.

¹⁰*Ibid.*, p. 82.

The importance of this attitude can hardly be overestimated, for it has long been the contention of the finer class of union leaders that organized labor is always willing and anxious to cooperate constructively with the employer, but that such cooperation has been impossible where the employer has waged incessant warfare on the union. Moreover, it is urged that when the unions must fight for recognition, the fighters, rather than the constructive thinkers among their members, will hold the positions of leadership; and that a constructive leadership can be developed only when there is frank union recognition.

These joint councils of the printing and electrical industries are testing these claims of organized labor. They are based upon frank and continuous union recognition, as a platform of constructive cooperation.

The work of the two councils in the printing industries justifies the conclusion that there are tremendous possibilities in the joint council plan. These councils have undertaken and accomplished results that could not have been accomplished without a large measure of joint cooperative effort. They have already been active in connection with practically all of the functions outlined for them in their constitutions, and, in many instances, have accomplished notable results.

The pronounced success of these union councils must be considered by those opponents of trade unionism who have urged the formation of a local non-union type of joint council, on the basis that unionism necessarily brings class struggle, distrust, and inefficiency, while the local non-union council brings constructive cooperation. The councils in the printing and electrical industries have shown quite conclusively that when employers are willing to recognize and deal frankly with the unions on some permanent and continuous basis, and show toward the organized workers sympathetic good will and a sincere desire to cooperate, those workers will respond with a similar spirit of good will and a desire to cooperate.

B. SUMMARY AND CONCLUSIONS

The foregoing discussion has afforded the basis for certain important conclusions respecting the council movement. In the first place, it has substantiated the claim of the trade unions, that they have obtained a large measure of democratic industrial control

through national, district, and local councils, composed of representatives of the employers and the workers. There is no justification for the tendency of some writers to distinguish between so-called "industrial democracy" plans and collective bargaining through unions, with the implication that these non-union council plans achieve real democratic industrial management; and collective bargaining, as carried on by unions, does not. On the contrary, the unions have dealt with the same vital problems of industrial management as have non-union councils; they have dealt with them in essentially the same manner; and have, on the whole, exercised a more authoritative voice respecting these matters. Moreover, the total accomplishments of non-union councils have been insignificant in comparison to the accomplishments of the unions.

The procedure in the two cases is essentially the same. There is no magic in a non-union works council plan which can remove the conflict of interests that exists between the employers and the workers. If the non-union council plan truly affords a measure of democratic industrial management, it will function in regard to controversial matters, such as wages, hours, conditions, discharge, shop rules, and the like, just the same as do representative joint councils that form union trade agreements, or the local joint councils that interpret and enforce such agreements. In any case, there will be conflicting interests, and the representatives of each party will strive to serve the interests of his constituency.

A second conclusion which may be drawn, is that where employers frankly recognize and deal with the unions on a permanent basis and in good faith, joint councils may be established, wherein constructive cooperation may be realized. The success of the Whitley councils in England constitutes valuable evidence upon this point.

The issue, then, between the unions and the local non-union councils might be fairly stated thus: Shall there be democratic industrial management by national, district, and local joint councils, composed of representatives on the workers' side, elected by the workers in the industry, district, and plant or shop respectively; or shall there be democratic industrial management by local plant or shop councils unrelated to other sections of the industry? The discussion of this issue is reserved to the following chapter.

CHAPTER VI

TRADE UNIONS VERSUS THE NON-UNION COUNCILS

To a considerable degree, the non-union local works councils in the United States and the unions represent two antagonistic and competing movements. Many of the non-union councils are organized, either to avoid dealing with existing unions, or to prevent the union organization getting a foothold among the men. The latter is the more general situation.

The evidence sometimes offered to show that the non-union council movement is not antagonistic to the unions is the clause that appears in most of the constitutions of council plans, to the effect that no discrimination shall be made against any worker for belonging to any labor organization. A typical example of these provisions is: "There shall be no discrimination under this plan against any employee because of race, sex, political or religious affiliation, or membership in any labor or other organization." A number of provisions add the clause, "or for non-membership in union, fraternity, or other organization." Some plans have the briefer provision that employees are not deprived of the right to belong to a labor organization.

However, it is difficult to see how these provisions constitute any conclusive evidence that the non-union councils are not antagonistic to the unions. These provisions exist in most plans, without question. There is no evidence at hand to show that they are not strictly complied with by the employers. But when all that is admitted, there is still no evidence to show that these firms will deal with the unions, or that when forming their council plans, they have not been hoping that these plans would result in the men's dropping out of the union or refusing to join one. These provisions are simply safeguards to individual workers that they will not be treated differently from other employees because they do belong to a union.

The second argument frequently offered is that many union men have served efficiently as representatives on these works councils. But merely because individual union men have approved of these plans and have cooperated in them and their unions have not refused to permit them to do so, is no evidence that such works councils are not organized with the purpose of injuring unions, or that they are not accomplishing that purpose. On the

other hand, there is considerable evidence that these non-union councils have been organized in many cases with the purpose of gaining permanent localized collective bargaining within the plant or works.

Jett Lauck, who had extensive experience with shop committees when serving as Secretary of the War Labor Board, refers to the non-union council movement in the following terms:

"A large group of employers are trying to evade union recognition by the formation of shop committees and the application of various local schemes of employee representation."¹

Paul Studensky, who made a study of council plans for the New Jersey State Chamber of Commerce, admits that the movement is partly an effort to "forestall the unionization of the workers."²

William Leiserson, former Impartial Chairman for the Rochester Clothing Market, declares that "no employer who is frank will deny that in adopting shop committees, he is trying to avoid dealing with unions."³

Ordway Tead, a prominent industrial engineer, testifies that the honest conviction of many employers who are announcing plans of employee representation is expressed in the statement, "If I give my workers a voice in control, there will be no place for any outside organization."⁴

R. C. Newcomb, superintendent of the Deane Works, Worthington Pump and Machine Corporation, says that industrial democracy is "usually offered as an antidote for trade unionism."⁵

An official of the Virginia Bridge and Iron Co., in his reply to the questionnaire sent out in the course of this study, states that "forming a shop committee was done in a sincere effort to counteract the baneful and destructive effects both in morale and production of constant agitation from sources outside the employees themselves, such agitation being almost wholly of imported union inception."

¹*The Annals of the American Academy of Political and Social Science*, Vol. 90, July, 1920, p. 94.

²"New Jersey," Shop Committees and Industrial Councils," *Report of the Bureau of State Research*, Vol. VI, No. 10, July, 1919, p. 3.

³*The Annals of the American Academy of Political and Social Science*, Vol. XCI, September, 1920, p. 2.

⁴*New Republic*, Vol. 19, June, 1919, p. 241.

⁵*Iron Trade Review*, Vol. 66, February, 1920, p. 565.

The personnel director of a large concern in Chicago recently stated quite frankly to the writer that the employers in his industry did not wish to deal with the unions, and had, therefore, organized joint works council plans.

In the course of this study, the writer has had many interviews and much correspondence with employment managers, personnel directors, and company officials in plants having employee representation plans. The most typical attitude toward unions that has been found among such men, is as follows:

"We do not oppose the union, as such. We concede to the workman the right to organize. We believe the union can carry on many important functions which no other type of organization can perform. But the unions have fallen into disrepute with us and the public, and made it impossible for us to deal with them. Due to the fact that the modern union must charge substantial dues, and that the workman will not pay such dues unless his interest in the union is kept at a high pitch, the leaders of the unions have been compelled to be continually forcing an issue, either by demanding more favorable terms, or fighting proposed changes in the terms of the labor contract. To hold the union together and to expand it, have necessitated placing in power the fire-eating, agitating type of leaders, who can and will keep up the fighting spirit, and keep loyalty to the union strong.

"These leaders have made cooperation and successful collective bargaining through unions impossible from one point of view, because they dare not permit prolonged periods of peace. They cannot cooperate; but must pick a fight in order to save their lucrative and easy riding positions. But this continuous fight engenders class hatred, ill will, and bitterness. The result is inefficiency. Our efforts at scientific personnel management are rendered futile, because the necessary good will and cooperation of the workers are absent.

"Therefore, while we concede the right of organization to the workers, and approve collective bargaining, we are trying to replace the union with another type of organization that will not charge dues and will not need to keep up interest in order to collect them, and which will not have salaried leaders whose position and salary depend upon successful agitation and continuous industrial warfare.

"Under this new localized form of organization and collective bargaining, we have found the men reasonable beyond our fondest expectations. Also constructive cooperation and increased efficiency have at last become possible. The results are beneficial to the public and the worker, as well as to ourselves."

The most valuable evidence collected in the course of this investigation regarding the purpose of employers in organizing non-union council plans has been obtained only upon confidential terms, and cannot be presented. It must suffice to state that the conclusion herein reached is that the majority of non-union council plans have been organized either to undermine existing unions, or to avoid what has been regarded as the otherwise inevitable coming of collective bargaining with unions. This statement does not deny the existence of other important purposes.

Evidence of the effect that non-union councils have had upon the unions has also been difficult to obtain. Many of the inquiries sent out upon this topic were ignored. However, these facts have been obtained:

The Traub Manufacturing Co. has a non-union joint works council in its plant. E. E. Bross, president and general manager of the company, states:

"No objection to our men maintaining membership in the union is offered, but they have all dropped out of their own accord. I have known agitators to come to the plant and ask for a man by name, and that man returned word that he was working and did not have time to see him. Just recently a man from New York tried to incite a sympathetic strike among our men. We paid no attention to him, and the men refused to have anything to do with him."⁶

William McKenzie, president and manager of the Crookston Times Printing Co., in discussing the success of their council plan, says:

"One day toward the end of the month we were honored by a visit from a walking delegate. He wanted to organize the shop. He met a chilly reception. 'Why should we organize a union?' he was asked. 'We are already organized. We have a union now that is giving us everything we could ask for, a partnership in the

⁶*Factory*, Vol. 25, August 15, 1920, p. 538.

business, a voice in its management, and a share in its profits.' The organizer saw there was not a chance in the world for him in that situation and left in a very short time."⁷

The following experience is reported in connection with the Printz-Biederman Company's works council plan:

"The Printz-Biederman Company had an open shop, although many of the employees were union members. In September, 1915, the Garment Makers' Union decided to unionize Cleveland and to start with this shop. The employees heard of the intention through the newspapers; the Senate and the House passed a resolution and it was ratified by the general mass meeting. Here is the resolution:

"Whereas the articles appearing in the 'Plain Dealer' under this date and attached hereto conveys a false impression concerning the working conditions in our factory and further indicates our plant as the object of an unjust attack; we, the employees in the House of Representatives, and Senate, specially assembled this third day of September:

"Resolved, that the action of the Printz-Biederman Co., in giving us for the past two years such full authority to change any and all working conditions in our plant, is fully appreciated by the whole body of employees, numbering about 1,000 people and it is

"Resolved, that we, the employees of the Printz-Biederman Co., hereby express our strong disapproval of the action taken by an outside organization as shown in the proposed demand referred to in this newspaper article, and be it further

"Resolved, that we tender to our company our most earnest and sincere support for the present most fair methods of conducting the business.'

"If we knew any stronger language of expressing our full satisfaction, we would use it.

CHAIRMAN, *House of Representatives.*

PRESIDENT, *Senate.*'

"The union never presented a demand. The agitators left town that night."⁸

⁷*System*, Vol. 37, April, 1920, p. 753.

⁸Leitch, John, *Man to Man*, p. 191.

In answer to the questionnaire, the Walworth Manufacturing Co. reports that when it adopted its works council plan, 80% of its men belonged to unions, but now about 20% are members. The Virginia Bridge and Iron Co. makes a similar report. At the time of the adoption of its plan, 90% of its men belonged to unions, but now only 2% are members. Another firm makes the statement that 75% of its men were in unions when its council plan was adopted, but now 25% belong.

A letter received from John P. Frey, Editor of the *International Molders' Journal*, contains the following significant statement:

"Replying to question number 4, so far as our observation has gone, the effect of all the suggested plans where they have been placed in operation has been to weaken the efforts of trade unionism. In fact, the majority of the suggested plans have received the approval of management because of its opinion that these plans would weaken or destroy the trade union movement."

The natural consequence of the local joint council type of collective bargaining, if successful, will be to undermine the union. Where the right of collective bargaining is accorded and satisfactory adjustments obtained, without the expense of paying union dues, membership in unions will inevitably dwindle away. It is not difficult for the trade union to hold its members, when no other form of collective bargaining exists and when dissatisfaction over autocratic control, hours, wages, and similar matters is so great that the worker can see immediate benefits to be obtained through union activity. Where these matters are satisfactorily settled through local non-union councils it is extremely improbable that the average worker will be amenable to the arguments of the union organizer.

There is reason to believe, therefore, that the non-union council and the unions represent antagonistic and competing movements, and that many workers and employers are making, or will make, a choice between these two types of collective bargaining. Under these conditions, it is important to inquire into the relative merits of the two forms of organization.

One of the crying evils of the modern industrial system is the ever increasing subdivision of labor, which results in monotonous and uninteresting tasks. The worker tends more and more to become a mere cog in an industrial machine, without opportunity

to exercise initiative, to think and plan, and to see his own thoughts and will expressed in his work. This results in dwarfing the worker's intellect because his unused powers atrophy and he tends to lose the capacity to think, plan, and create. The worker, whose sole activity during the greater share of his waking hours is confined to some simple repetitious task, cannot escape the penalty of a dwarfed personality and a stunted intellect.

The hands of the clock cannot be turned back. A return to the earlier stage of craftsmanship, when the skilled artisan's activities were sufficiently broad and difficult to afford exercise for his diverse faculties, is both impossible and undesirable. However, something must be done to counteract the deadening and dwarfing effect of minute subdivision of labor. It is a problem which must be approached from many angles, and one which admits of no simple solution. One argument advanced in favor of the local non-union councils is that they make a contribution to the solution of this problem.

Scientific management, with paternalistic control, intensifies this problem, by imposing upon the worker such minute tasks and such minute directions that he is relieved of the last vestige of responsibility and opportunity to exercise intellectual faculties. On the other hand, democratic industrial management, through shop committees, department committees, special committees, and works councils on which membership is rotated, results in extending to the worker a new opportunity to shoulder responsibility and to think and plan. Where such committees and councils study and regulate the many and difficult problems of industrial relations, and also undertake constructive problems of scientific management both as regards productive technique and distribution of product, the problem of the dwarfing effect of simple repetitious tasks will be correspondingly diminished.

The issue at this point is whether or not the trade union type of joint industrial management can accomplish as much in the solution of this problem as can the local non-union council plan. There is obviously a loss of local shop autonomy under trade unionism. It is the defense of the union business agent and the union trade agreement, that they relieve the members of the shop or works of the task of defending their own interests with resulting possibilities of discrimination on the part of employers.

The few hired officials of the union devote their entire time to the solution of the problems that under the non-union council plan are performed by the local shop committee or shop representatives on the works council, which positions can be and are held in the course of time by many members of the working force.

Nevertheless, there is reason to believe that this gain in the direction of local autonomy must be purchased at the expense of retrogression in methods of collective bargaining. The present integrated union movement, which has placed the making of collective agreements in the hands of central authorities and the enforcement of such agreements largely in the hands of the union officials, has evolved in response to definite needs. The immediate members of any working force, by agitation for improved conditions or by over-enthusiastic and efficient defense of their own and their fellow workers' interests, subject themselves to the disapproval of their foremen, superintendents, and other superior officers. The power of such officials over the worker, both as regards security of tenure and advancement, is such that oftentimes it precludes the possibility of effective participation in collective bargaining or joint industrial management by the local workers. The union officials, the business agent, and the central council that meet with the employers to draw up trade agreements, have been evolved in order to remove the influence of local exigencies and deprive the employer of that source of bargaining power.

By pursuing this same line of thought a step further, a second significant objection to the local non-union council is revealed. The integration of the local unions into trade and industrial unions came in response to the need for an organization sufficiently broad in scope to attack industry-wide problems. For example, where competition is strong within an industry, no local union can hope to obtain substantial improvements in the economic status of its members so long as low wages, long hours, and adverse working conditions prevail in any substantial portion of the industry. This constitutes an industry-wide problem that can be adequately attacked only by an industry-wide organization, such as the trade union affords.

The significance of this weakness, on the part of the local non-union works council, has been deeply impressed upon the writer in the course of this investigation, by reason of the fact that a

study of the proceedings of works councils has revealed a prevalent use of the exigencies of competition as an argument for reduction of wages, longer hours, or many similar demands of the employers. Facts and figures carefully organized and forcefully presented which show that an increase of wages is impossible and a decrease is necessary in order to meet competitors' prices and to continue to gain a share of the business, become the employer's chief ally in collective bargaining on a local non-union scale. Few employees comprehend the fact that once this force of competition is given a free rein in an industry, it may travel a course that holds wages, hours, and working conditions down to anti-social levels.

A third weakness in the non-union works council type of collective bargaining is found in the lack of adequate knowledge among the rank and file of the workers. The following extract from a letter received from a prominent trade unionist deals with this point:

"The reason why we oppose all of these plans is that the workers in the plant cannot secure the knowledge necessary to enable them to hold their own successfully in discussing their claims with the management.

"The workmen in a plant are not familiar with trade reports, with Dunns, with Bradstreets, with counsellor reports, with the tendency of the money market, with internal and external competition, with conditions obtaining within the same industry in other cities and states. Without such knowledge, they are not possessed of the information necessary to discuss successfully wages, etc. with their employers. It is only a trade union movement which elects men to devote their entire time to studying these questions, which is able to supply the workers with the information they require."

Employers themselves have often testified regarding the ignorance of the average worker in matters of business finance. Surplus and depreciation funds, problems of attracting adequate capital, the meaning and significance of stock dividends, and numerous similar matters are so misunderstood by the workers that their concept of industrial justice is thereby sadly warped. This same ignorance gives the employer the upper hand in bargaining with the local non-union shop committee or works council.

The most popular argument against the non-union, intra-plant type of collective bargaining remains to be stated. Many council plans provide that decisions must be reached by agreement, a unanimous vote, or at least by a majority vote of the representative body. This necessitates the approval of all or some of the employer's representatives before any measure can be passed. If the company's representatives vote "no" to labor's proposals, what alternative is left? There remains only the resort to direct action by striking, boycotting, or similar tactics. But if the workers of the firm have forsaken the union and given allegiance to the local council plan, they cannot hope to use direct action effectively. They face an employer backed by a well organized employers' association, pledged to help him win.

According to a recent estimate published by the National Industrial Conference Board, there are now more than 3,000 employers' associations in the United States with a total membership of over 4,000,000.⁹ The typical employers' association is so organized and managed that it can materially increase the bargaining power of its constituents. Special defense funds, devoted to the assistance of members involved in industrial emergencies, and salaried commissioners or executive secretaries, whose duties are analagous to those of the business agent of the union, are maintained by those associations. Provisions are made whereby in time of emergency, such as the strike, a member may draw heavily upon the defense fund, may receive the assistance of other members in filling orders, and may obtain a large supply of all necessary types of labor through the central association and its members. The association will also exert its powerful influences in every way possible to obtain for the member who is in trouble concessions from customers, bankers, and those furnishing raw materials. Against this array of power the workers have to place their puny intra-plant organization.

Negotiations through this intra-plant organization are hardly entitled to the name, "collective bargaining," for the most essential attributes of individual bargaining are present. The individual worker bargaining with the employer has always suffered from insufficient waiting power, due to lack of funds; from immobility, due to lack of funds and lack of knowledge of the labor market;

⁹Watkins, Gordon S., *Introduction to the Study of Labor Problems*, p. 393.

and from inadequate leadership. The unions have been evolved to remedy these weaknesses. These basic causes of inequality in bargaining power are not remedied by the local non-union type of intra-plant organization. Direct action under these conditions would be ludicrous, and collective bargaining a fiction. True collective bargaining can exist only where there is approximate equality of bargaining power between the two parties. In proportion as this equality, the essence of collective bargaining, is lost, the old status of the individual bargain prevails. Such would be the obvious and inevitable effect of the spread of the local non-union council movement in so far as it replaces or forestalls unionism.

While admitting the force of the foregoing argument, it is necessary to call attention to one phase of the question which such reasoning ignores. The majority of the local council plans provide for final decisions by arbitration. In these cases, it is not true that the company officials may defeat any measure by voting "no"; that they, therefore, hold all final authority; and that in case they oppose a measure, the only recourse of the workers is to direct action under conditions of great inequality in bargaining power. In the minds of many students, final arbitration is the fairest solution that can be found for issues upon which the conflicting parties cannot agree. Indeed, when strong unions exist, the result of collective bargaining is frequently, perhaps generally, final arbitration or a compromise similar to that which the arbitrator would have decreed.

The answer most frequently offered to the critics of the non-union council plans is that the non-union councils must be considered a success and more advantageous to the worker than the union, because wages, hours, and general conditions have been better under these council plans than in plants where the union prevails. No doubt there is much truth in this assertion. The evidence collected in the course of this investigation leaves no doubt in the writer's mind that in a very substantial proportion of the plants wherein works councils or shop committee systems have been introduced, conditions, hours, and wages have been as good as, or better than, unions have obtained in similar plants elsewhere. This constitutes one of the most promising features of the works council movement, and explains, in part, the adverse effect of the local council upon the union.

In view of these facts, the question is raised as to the validity or significance of all arguments against the local non-union type of collective bargaining. What matters it that they have no industry-wide organization to meet industry-wide problems; have less bargaining power than the union; and cannot avail themselves of expert knowledge and advice as can the union? If wages, hours, and conditions are as good as, or better than, in union plants, and democratic control prevails to a greater degree, what significance have such supposed weaknesses?

This proposition is open to attack from two angles. In the first place, the movement is yet in its infancy. The majority of council plans have not yet celebrated their fourth birthday. The movement is largely anti-union and if it is to accomplish its purpose of destroying existing unions and checking the spread of unions, it must make a good record in its first four years. The employees may have no real authority, but the management may have paternalistically conceded as good, or better, wages, hours, and conditions as the unions obtain elsewhere in order to convince the workers that local collective bargaining is as effective as unionism. However, gradually as the existing unions are weakened, or the danger of the spread of unionism within the industry is diminished, the autocratic power of the management can be reasserted and profits increased at the expense of wages. In short, once the local non-union council type of collective bargaining is firmly installed in an industry, the employer will be able to manipulate wages, hours, and conditions, so as to forestall the growth of unionism. But to do so will necessitate placing wages, hours, and conditions on a par with those obtained by the unions only at times when unionism threatens to regain its foothold. At other times, perhaps for long periods after unionism within the industry is thoroughly broken, the terms of the labor contract can be made favorable to the employer. Long run profits under such a system might be larger and long run wages less than under union conditions.

The proponents of unionism also urge that the fact that wages, hours, and conditions in many plants having non-union council or committee plans are as good as, or better than, in the union plants, instead of being an argument for such plans, is in reality another tribute to the trade unions. The existence of the unions

and favorable terms of the labor contract obtained by them, has been the force that has compelled the paternalistic employer to grant equally favorable terms to his employees in order to make his non-union council plan a success. The accomplishments of the unions have redounded to the benefit of the workers in these non-union plants in the same way that they redound to the benefit of the remnants of unorganized workers in any well organized trade.

Finally, in this connection, it should be emphasized that the existence of favorable terms in the labor contracts obtained under non-union intra-plant bargaining does not remove the objection that the broader functions of the trade unions, as embodied in their political activities in behalf of labor, cannot be performed by the local intra-plant organization.

Another defense of the non-union works council is based upon the proposition that the works council brings increased cooperation and good will, with a resulting increase in productivity, which redounds to the benefit of worker, employer, and consumer, while the union causes and encourages class struggle. Under the latter condition, bitterness, restriction of output, striking on the job, and general inefficiency are the result. The product to be distributed grows less per man, and the struggle of each factor for a larger share is thereby intensified.

There is truth in this oftentimes exaggerated contrast of the two movements. The rapid growth of organization among the workers has been paralleled by a similar rapid growth of organization among the employers. The ill will and intolerance in each of these opposing camps have apparently steadily increased, and the increasing scope and intensity of the struggle that has ensued have afforded a wealth of support for the proponents of the Marxian doctrine of class struggle.

On the other hand, the vast majority of the local non-union works councils have apparently operated in an atmosphere of good will and have gained much constructive cooperation. Increased production and a decrease of strikes and other more subtle types of industrial warfare have been the general result.

However, in an impartial discussion of the relative merits of these two types of collective bargaining, cognizance must be taken of the truth in the union's contention that the cause of the class conflict that results from unionism is to be found in the antago-

nism of the employing class. The general situation has been characterized by the refusal of the employers to deal with the unions. They have declared war upon unions and have dealt with their representatives only when forced to do so. They have assumed the right of organization among themselves, but have tried to deny that right to the workers. The only possible outcome has been class struggle, warfare, ill will, and inefficiency.

Nevertheless, it is urged, there are exceptions that show that such evils are not a necessary corollary of collective bargaining through unions. The successful council movement in England has been based upon unionism. The works committees, district and national councils, are composed of union and management representatives. The accomplishments of these councils have been such as to demonstrate the possibilities of constructive cooperation between men and management, when management gives such cooperation a frank and fair trial. Similar results are claimed for the industrial councils found in the printing and electric industries in the United States. The success of the Hart, Schaffner and Marx plan of industrial relations is also cited in this connection as an example of constructive cooperation of management and union men, with resulting good will and efficiency.

There is, in fact, something intangible about the contention that the trade unions necessarily bring class conflict, ill will, and inefficiency, while the local company unions bring good will, cooperation, and efficiency. It is the almost universal testimony of employers who have tried non-union works council plans, that they have found their men intelligent and reasonable, and cooperation with them an easy matter. Is it impossible for the employers to cooperate with these men when they are organized into unions? Or has the employer's bitter warfare against the union brought a logical reaction of bitterness and warfare from its members, and forced it to develop a radical, militant, type of leaders in place of a more constructive type? Here again we must freely acknowledge a modicum of truth in the arguments of both sides.

The size and scope of trade or industrial unions increase their problem of maintaining membership, interest, and efficient leaders. The agitator's services are needed. He gains control, and as a result the employer is antagonized; unreasonable demands by the unions increase; and industrial warfare is intensified. But it is also true that trade unions have been forced to fight a long battle

merely to establish their right to collective bargaining, and that the effect of this general opposition by employers has necessitated the very fighting, agitating, fire-eating, type of union leaders of which they now complain.

In one respect it is obvious that the local works council fails entirely to offer a satisfactory substitute for the trade unions. The tendency is always to conceive of the functions of the trade unions in terms of bargaining for wages, hours, and working conditions, and to overlook their extensive accomplishments of obtaining labor legislation, the proper enforcement of labor laws, and the defeat of proposed legislative measures opposed to the interests of the workers. Minimum wages, regulation of hours and conditions of work, workmen's compensation, child labor, immigration, tariffs, regulation of employment bureaus, are but a few examples of the many subjects upon which organized labor has helped to obtain legislation favorable to the worker. Many trade agreements, notably in the mining and railroad industries, call for the enforcement of all labor laws. The American Federation of Labor has its state and national legislative committees, and through its organized lobbying system focuses the political power of labor upon desirable or undesirable legislation. This function of the American trade union is made doubly significant and essential by the absence of a labor party. Without the unions, labor's political power in the United States would be almost nil. These broader functions performed in the interests of labor by the unions could never be performed by the local non-union councils. Coordinated activity would be impossible. The most desirable course, according to many unionists, would be to have both the union and the local shop committees and councils, and to obtain the benefits of both forms of organization.

In the 1919 convention of the American Federation of Labor the following resolution was passed:

"The Executive Council believes that in all large permanent shops a regular arrangement should be provided whereby—

"First—A committee of the workers would regularly meet with the shop management to confer over matters of production; and whereby—

"Second—Such committees could carry beyond the foreman and superintendent to the general manager or to the president, any important grievance which the workers may have with reference to wages, hours, and conditions."

Matthew Woll, vice-president of the American Federation of Labor, writes this:

"It is not urged that the 'Shop Committee' plan as a supplemental branch to the trade unions cannot be made to serve a most helpful purpose in industry. To the contrary, the necessity of team work between all workers in a plant or shop is fully and freely conceded. Indeed, the formation of shop committees is required by many trade unions as a method of considering problems of production with the shop management, to secure team work, to adjust conflicts, and if need be, to take up all shop questions with the highest officials of the plant.

"The trade unions fully recognize that there are many questions closely affecting daily life and comfort in the success of business, and in no small degree, efficiency in production, which are peculiar to the individual workshop and factory. Confined to these purposes . . . , shop committees, as supplemental branches of the trade union movement, are not alone favored but recommended."¹⁰

In Chapter V of this study, a description of the type and functions of shop committees which exist in many union plants was given. These committees are composed of representatives elected by all the men in the shop, or of a single shop steward who is elected by the men or appointed by the union. The function of these local union shop committees or shop stewards is primarily to interpret and enforce the terms of the trade agreement, and to adjust any grievances or conflicts that arise. Such committees meet with representatives of the management, thus forming joint committees. It is this type of shop committees that the trade union leaders have in mind when they express their approval of local shop organization. Stated concisely, their position is this:

The satisfactory solution of some problems, such as hours, wages, and working conditions, necessitates uniformity and standardization throughout a competitive industry. Such uniformity

¹⁰*Annals of the American Academy of Political and Social Science*, Vol. XCI, September, 1920, p. 14.

and standardization can be obtained only through trade unions negotiating district or national trade agreements. Local shop committees and works councils cannot be permitted to tamper with such issues. But in the local interpretation and application of the necessarily broad and general provisions of the trade agreement, as well as in the adjustment of all minor grievances and conflicts that arise between employer and men, there is room for much constructive work by a local shop committee or works council. Moreover, there are unlimited possibilities of constructive co-operation between such local committees of the men and management in developing improved methods of production. Finally, there is no objection to such local committees cooperating with the management in fixing shop rules and regulations, in so far as this involves no interference with the terms of the trade agreements.

Under such an arrangement, the work of the shop committees and works councils would be coordinated with, and supplemental to, the larger union organization. They might be an integral part of the union, as in the case of many of the works councils in England; or, like the German works council, they might be a distinct organization, elected by all union and non-union workers in the shop or plant, but operating in strict harmony and cooperation with the union.

However, it cannot be conceded that such an arrangement would gain the benefits of both central and local organizations. In the first place, it is obvious that any attempt to subordinate the local works council to the union, could succeed only by the sacrifice of local shop autonomy in the crucial matters of wages, hours, conditions of work, and closely related problems. This would result in a proportionate loss in interest on the part of the working force, and a proportionate loss of efficiency. The power of the local committee or council to counteract the narrowing influence of subdivision of labor and machine production by extending to the worker an opportunity for activity on committees handling these important problems would be correspondingly diminished.

In the second place, the expected benefit under the local type of organization of avoiding an undesirable class of leaders would be lost by combining the unions and the local councils. The union demands, and encourage industrial warfare, might still hold sway. agitator who would antagonize employers, make unreasonable demands, and encourage industrial warfare, might still hold sway.

The foregoing discussion does not form an adequate basis for any unqualified conclusions respecting the merits of the union and the non-union council. It has been made apparent that such gains as the worker can hope to attain through the choice of localized collective bargaining under a non-union council plan must be purchased at a tremendous expense and with great risk. Such a choice would be accompanied by great possibilities of future harm to the working class.

For most employers, the local non-union council type of bargaining is possibly the most desirable. In these days of monopoly, combination, open price associations, and gentlemen's agreements, the intensity of competition has been greatly diminished. Nevertheless, there may be employers who desire to improve the standard of living of their workers, but who are really unable to do so because of competition. To such employers, the union's help in standardizing conditions would be welcome, and if higher standards for the worker but increased efficiency, the result would be beneficial to all concerned. There may also be employers who, under localized non-union collective bargaining, would lower wages and lengthen hours until the resulting inefficiency would defeat their own end of increasing profits. To them, the power of a strong union to hold up higher standards would be beneficial. But to the employers who recognize the possibilities of more democratic industrial management; who install a genuine employee representation plan; who thereby avoid industrial warfare with unions; and gain the good will and cooperation of their working force, to such employers the non-union councils are most desirable. The majority of employers now having non-union council plans belong to the latter group. They have found their council plans a decided success.

The defense of the non-union council plans is often stated in terms of the benefits accruing to the general public or the consumers. Less industrial warfare and increased production resulting from works council plans might result in lower prices. On the other hand, if the increased productivity resulted in larger profits, rather than lowered prices, the benefit to consumers would be lost. Finally, if the bargaining power of the workers should be lessened, in the long run, by virtue of their choice of the local council in preference to the union, any benefit to them from lower prices might be more than overbalanced by their loss in wages.

One effect of the works council movement appears certain. It has already gained sufficient momentum and sufficient scope to arouse in the leaders of organized labor bitter antagonism. It has already spread to over seven hundred American plants, and its progress in the last two years has been greater than in the preceding two years. The immediate effect of this has been, and will be, to incite the unions to greater efforts and to make the industrial conflict at many points more bitter than before. "Company unions" have already been classified with "scabs," and have become a new object for hatred and abuse. To one who follows the labor press it appears that they bid fair to become not a harbinger of peace and good will, but a new bone of contention and a new cause of industrial conflict.

There seems to be little probability that the non-union council movement will destroy many existing unions in the near future. Nevertheless, the experience in the packing industry has shown that union leaders have a new and serious factor with which to contend. The council plan of the Pennsylvania Railroad is well established, and if similar plans are adopted in any substantial proportion of the railroad industry, the outcome of another great railroad strike might be such as to break the strength of even the strong railroad brotherhoods. In any event, their power would be seriously lessened. However, the non-union council movement, if the present rapid rate of increase continues long, cannot fail to check materially the growth of unions. It is in this direction, rather than in destroying existing unions, that its effects will be most harmful to the plans of organized labor.

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